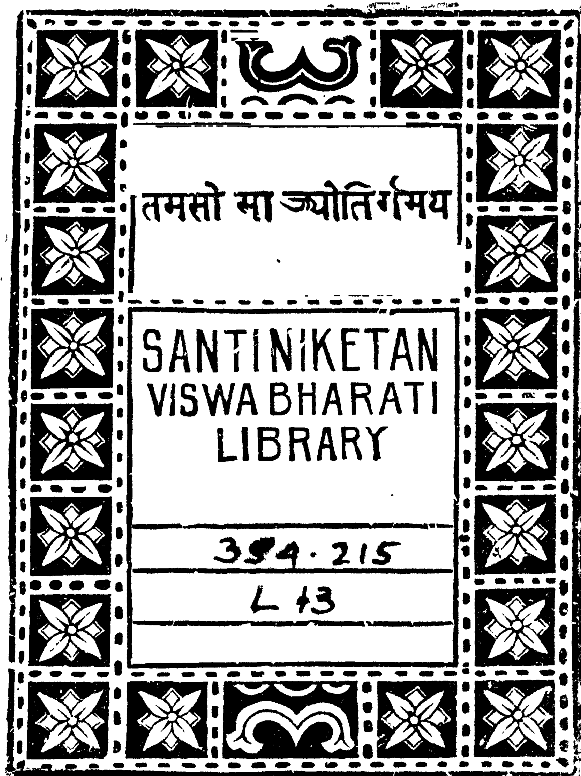

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NEW CONSTITUTION OF INDIA

NEW CONSTITUTION OF INDIA

BY

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AND

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PREFACE

The introduction of the New Constitution of India imposes a heavy responsibility on the citizen, whether he is a legislator, a publicist, a student, or an official. The present work is intended to help him in equipping himself with a knowledge of the essential features of the Constitution considered from the Indian point of view.

In the preparation of this book the authors have spared no pains in utilising relevant Parliamentary papers and Debates ; the numerous Memoranda before the Joint Parliamentary Committee ; Debates in the India Legislatures ; Reports of the various Commissions, Conferences and Committees connected with Indian Constitutional discussions ; recent Orders in Council ; and other published material. The book includes a brief outline of the constitution of separated Burma, as also of the new Provinces of Sind and Orissa. The provisions and proposals in connection with the delimitation of constituencies are given in an Appendix. Whenever necessary, issues have been placed in a proper historical setting, and the study of the provisions of the Act of 1935 is preceded by a Historical Introduction.

The authors take this opportunity of acknowledging their indebtedness to the various authors mentioned in the book. They are particularly thankful to Mr. Dilip Kumar Sanyal of Vidyasagar College for kindly preparing the index for them.

CALCUTTA,
The 28th March, 1936.

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CHAPTER ONE

HISTORICAL INTRODUCTION

I

It is essential for a proper understanding of the Indian Constitution, as remodelled by the Government of India Act of 1935, that the reader should have an acquaintance with the more important among the constitutional changes that had preceded it.

Though the British obtained their first foothold in India at the dawn of the seventeenth century, A.D., when the East India Company, a commercial and trading concern, began its operations in the country, the grant of the Dewani of Bengal, Bihar and Orissa, by the Mogul Emperor Shah Alam, in 1765, to the Company, may be said to mark, for all practical purposes, the beginning of British territorial sovereignty in India. Thereupon, the need of an effective system of parliamentary control and supervision over the policy and administration of the East India Company was felt and discussed. The Regulating Act of 1773 was the first of a series of measures to realise that object.

Charter Act of 1833

The Charter Act of 1833 introduced a radical change in the nature of the constitution and functions of the Company. The East India Company were not only required by this Act 'to close their commercial business and to wind up their affairs with all convenient speed,' but the superintendence, direction, and control of the whole Civil and Military Government were expressly vested in a Governor-General and 'Counsellors' to be called the 'Governor-General

of India in Council'. The territorial possessions of the Company were to be held by the Company for another term of twenty years "in trust for His Majesty, his heirs and successors, for the service of the Government of India". It was also enacted that no Indian shall be disabled from holding any place, office or employment by reason only of his religion, place of birth, descent, colour or any of them.

Charter Act of 1853

The last of the Charter Acts was passed in 1853. It did not renew the former term of twenty years. It provided instead that the Indian territory should remain under the Government of the East India Company, in trust for the Crown, "until Parliament should otherwise direct". An important change that the Act introduced was the constitution of a legislative council. This council consisted of twelve official members.* The East India Company were allowed the privilege of sovereignty in political, administrative and military spheres, under the authority of the British Parliament,† until the Government of India was transferred to the British Crown in 1858.

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* It included the Governor-General, the Commander-in-Chief, the four ordinary members of the Governor-General's Council, the Chief Justice of Bengal, a puisne Judge of the Supreme Court and four members selected from among the Company's servants of ten years' standing by the Local Governments of Bengal, Madras, Bombay and the then North-Western Provinces. The meetings of the Council were open to the public and the proceedings were officially published. The system of nomination to the I.C.S. was replaced by a system of open competitive examination held in London.

†"The control which the Company acquired over India was based in part on mere conquest, but in large measure under treaty and grants from the nominal Emperor at Delhi, and naturally enough the power which it acquired it exercised with Parliamentary sanction in the despotic fashion of the sovereigns whom it succeeded or represented."—*The Governments of the British Empire*: Arthur Berriedale Keith (1935).

The Govt. of India Act, 1858

A momentous stage in the evolution of the British Indian polity was reached when the Crown assumed full and direct control, after the Indian Mutiny (1857-58), under the Government of India Act 1858. The powers hitherto exercised either by the Court of Directors or the Board of Control were transferred to a Secretary of State. The Secretary of State for India was provided with a Council of fifteen members, called the Council of India. The Secretary of State, who was President of the Council, possessed powers of over-ruling it in case of difference of opinion. The expenditure of the revenues of India was placed under the control of the Secretary of State in Council.

The Queen's Proclamation

On the assumption of the Government of India by the British Crown, Queen Victoria made a proclamation to the Princes and peoples of India. Among other things, it announced neutrality and impartiality of the British Government in the matter of religion and declared that, 'so far as may be, our subjects of whatever race or creed', 'will be freely and impartially admitted to office in our service'. It declared that no further annexation of territory would be made and guaranteed the measure of internal sovereignty that the Princes possessed in the internal affairs of their States. It also contained the announcement to the Princes that "all Treaties and Engagements made with them by or under the authority of the Honourable East India Company are by us accepted and will be scrupulously observed".*

* The Royal Titles Act (1876) authorised the Queen to assume the title of the Empress of India.

Indian Councils Act, 1861

The Indian Councils Act of 1861 introduced important changes. The Executive Council of the Governor-General was to consist of five ordinary members, one of whom was to be a Barrister or Advocate of five years' standing. There was a further provision for a legislative council. Besides the members of the Governor-General's Executive Council, it was to consist of not less than six nor more than twelve additional members, nominated by the Governor-General, not less than half of whom were to be non-officials.

Councils Act, 1892

Largely as a result of the activities of the Indian National Congress, inaugurated in 1885, the Indian Councils Act, 1892, was passed. It enlarged the size of the legislative councils, both Indian and provincial. The number of additional members was increased in the Governor-General's Council from 12 to 16. In nominating members, the Governor-General adopted a course which led to the virtual introduction of a system of election. The Legislative Councils in the Centre and the provinces were authorised to discuss the annual financial statement and to allow interpellations by members, under specified conditions. The provincial Councils were authorised to repeal or alter with the previous sanction of the Governor-General, Acts of the Governor-General's Council affecting their province.*

The Indian Councils Act of 1909 introduced changes in the Executive Governments and Legislatures in the Centre and in the

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* The number of additional members of the Bengal, Bombay and Madras Councils was raised to a maximum of 20 each and that of the United (then North-Western) Provinces to 15. The Punjab and Burma were each given a Legislative Council in 1897 with a maximum strength of 15, and Eastern Bengal and Assam in 1905, after the partition of Bengal, with 20.

Provinces. The measure is associated with the names of Lord Morley, Secretary of State for India, and Lord Minto, Viceroy and Governor-General of India at the time. The scheme which took three years to take shape (1906-09) tried to blend the principles of autocracy and constitutionalism, and it was made clear that representative government was not being aimed at.* The policy of associating Indians in the task of government was given effect to by the appointment of Mr. (later Lord) S. P. Sinha as Law Member of the Governor-General's Council; two Indians had earlier been placed on the Secretary of State's Council. In pursuance of the same policy Indians were also placed on the Executive Councils for Bengal, Bombay, Madras and Bihar & Orissa.

Morley-Minto Reforms

A Durbar was held at Delhi on December 12, 1911, to commemorate the Coronation of King-Emperor George V which had already been celebrated in England. His Majesty King George attended the Durbar in person, this being the first occasion on which a British sovereign had as such visited India.

Changes announced at Delhi Durbar,1911

At this Durbar His Majesty made in person the declaration that His Majesty's Government had decided to annul the partition of Bengal and redistribute the provinces by the creation of a Governorship of the Presidency of Bengal, of a new Lieutenant-Governorship in Council administering the areas of Bihar,

* The essentials of the structure of the Indian constitution, before the introduction of the Montagu-Chelmsford Reforms of 1919, were characterised by (1) the concentration of authority at the Centre; (2) the control over the legislative functions exercised by the Executive; (3) the ultimate responsibility of Parliament for the whole of Indian Government.—*Report of the Indian Statutory Commission* (1930), Vol. I.

Chota Nagpur and Orissa and of a Chief Commissionership for Assam, with such administrative changes and boundaries as might be determined ; and that the seat of the Government of India is to be transferred from Calcutta to Delhi. These decisions were given effect to without delay. Advantage was taken of this opportunity to introduce such changes in the constitution of the Councils as alteration in the number of electorates or nominated seats, or the redistribution of seats between electorates, the qualifications of voters and candidates, the electoral procedure, etc.

Nature of changes (1909-12)

Under the Regulations of November 1909, as revised in 1912, the Legislative Council of the Governor-General of India was to consist of 69 members. These included 9 ex-officio, 33 nominated, of whom not more than 28 were to be official, and 27 elected, members. An official majority was thus retained in the Council of the Governor-General. The provincial legislatures were enlarged up to a maximum limit of 50 additional members in the larger provinces and thirty in the smaller ; and the composition was generally so arranged as to give a combination of officials and nominated non-officials a small majority over the elected members except in Bengal, where there was a clear elected majority. Besides the undemocratic system of separate electorates for Mahomedans, the principle of indirect election was introduced through a system of representation by classes and interests.

The functions of the Councils were of a three-fold nature. These were legislative, deliberative and interrogative. Though no change was introduced in the legislative functions and powers of the Councils, their power to discuss the budget was extended, members being allowed to propose resolutions and divide the Councils on them. Further, members were allowed to move resolutions on matters of general public importance on which divisions could be taken, and to ask supplementary questions. The character of these Councils is very aptly described by Professor Keith. The apparatus of Councils, he says, was not intended to do more than aid the executive in suitable legislation ; the power of the executive, even in the provinces where the Legislatures had non-official majorities,

could always in the long run be made effective by the paramount authority of the Central Government, the Legislature of which contained an official majority.*

II

There was a persistently increasing demand on the part of educated Indians for the introduction of the principles of popular government in the country. This was largely reflected in the activities of the Indian National Congress and in the discussions initiated in the legislatures by progressive Indians. The events of the Great War (1914—18), including the services that India rendered to Great Britain during the period of the long-drawn conflict, served to emphasise and strengthen the Indian demand for self-government. And to the late Mr. E. S. Montagu belongs the distinction of being the first among British statesmen to realise that nothing short of the grant of responsible Government could enable Britain to solve the Indian problem. He was also the first to work with a view to the attainment of that object.

Declaration of 1917

On the 20th August 1917 the Right Hon. E. S. Montagu, Secretary of State for India, made an announcement in the House of Commons that; "The policy of his Majesty's Government, with which the Government of India are in complete accord is that of the increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realisation of responsible government in India as an integral part of the British Empire". The

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* *The Governments of the British Empire* (1935).

Government of India Act, 1919, which came into force in April, 1921, was the outcome of the new policy to which the British Government was committed.

Montagu-Chelmsford Report

The Government of India Act, 1919, was mainly based on the recommendations contained in the Report on the Indian Constitutional Reforms (1918), of which the joint authors were the then Secretary of State for India and the Viceroy and Governor-General of India. This important state document is popularly known as the Montagu-Chelmsford Report. The Report laid down four principles to be followed in the framing of the new constitution. These were, first, that, there should be, as far as possible, complete popular control in local bodies and the largest possible independence for these of outside control ; secondly, that the provinces are the domain in which the earlier steps towards the progressive realisation of responsible government should be taken ; thirdly, that though steps are to be taken to enlarge the Indian Legislative Council, to make it more representative and to increase its opportunities of influencing Government, the Government of India should, for the time being, remain wholly responsible to the British Parliament ; and, fourthly, that there should be a gradual relaxation of the control of the British Parliament and the Secretary of State over the Government of India and the Provincial Governments.

The Constitution of 1919

As we have seen, the territories in British India are governed by, and in the name of, His Majesty the King-Emperor of India. The Government of India Act of 1919 vests the Crown with very wide and extensive powers; a number of the highest executive, judicial and ecclesiastical appointments are made by the Crown. But the powers that the Act confers on the British Crown in respect of the Government of British India are exercised through, and on the advice of a Minister, responsible through the British Parliament to the British electors. This Minister known as the Secretary

Imperial Control

of State for India, is above all, the constitutional adviser of the Crown in respect of the statutory powers exercised by the latter.

The Secretary of State for India

Further, the Secretary of State is, on the one hand, authorised to superintend, direct and control all acts, operations and concerns relating to the government or revenues of India ; and on the other, the Governor-General in Council, in whom is vested the superintendence, direction and control of the Civil and Military Government of India, is required to pay due obedience to such orders that he may receive in such matters from the Secretary of of State. This illustrates the extent of control that may be exercised by the British Cabinet and Government, over the Government of India.* Besides, in legislative matters it is laid down that every Act of the Indian Legislature or of any provincial Legislative Council, after the Governor-General has assented to it, has to be transmitted to the Secretary of State for India. In actual practice, all important central legislation is reported to the Secretary of State before being presented to the legislature. It was the intention of the framers of the Act that the Secretary of State need not, ordinarily, interfere in those cases in which the Government of India and non-official Indian opinion are in accord. There is provision for the relaxation of the control exercised over the Government of India by the Secretary of State or the Secretary of State in Council. By the use of the rule making power, with the approval of Parliament, considerable devolution of powers has accordingly been made.

The Council of India

The Act of 1919, inspite of the contrary recommendation of the Crewe Committee on the Home Administration of Indian Affairs (1919), provided for the continuance of the Council of India. The Council

* Prior to April, 1920, the salary of the Secretary of State for India was paid out of Indian revenues. This along with other circumstances contributed to make the control of the British Parliament over the Secretary of State somewhat unreal and shadowy. The salary of the Secretary of State for India is now paid out of moneys provided by the British Parliament.

consists of not less than eight and not more than twelve members, some of whom are Indians. Half the members of the Council of India are to be persons who have served or resided in India for at least ten years and have not last left India for more than five years before the date of appointment. A member of the Council ordinarily holds office for a term of five years. No member shall be capable of sitting or voting in Parliament. The Secretary of State for India is President of the Council with power to vote. To decide questions of certain specified classes such as matters relating to grants or appropriations of any part of the revenues of India ; the making of contracts for the purposes of the Act ; the making of rules regulating matters connected with the civil services ; rules regulating the general conditions under which the more important officials serve, etc., the concurrence of a majority of the votes at a meeting of the Council of India is needed.*

High Commissioner for India

Certain functions such as those relating to the purchase of Government stores, etc., which were formerly performed by the Secretary of State have now been transferred to the charge of the High Commissioner for India, who is a servant of the Government of India. The post was created by an Order-in-Council in August, 1920.

* In this connection the Simon Commission state : "Since the passing of the Act of 1919 the Secretary of State has been under no obligation to submit for the consideration of his Council, or even for its information, any matter falling outside a limited number of classes, of which expenditure from Indian revenues and the rules governing the conditions of service of civil officials are the chief. We are satisfied that the Council as at present constituted, could not, outside this range, oppose effectively any policy that has the approval of the Secretary of State". These remarks taken with the further statement made by the Simon Commission that the Council never has had any power of initiating action or expenditure, and it can only consider proposals put before it by the Secretary of State, give an idea of the extent of uncontrolled power wielded by the Secretary of State over the Government of India.

Central Government

The Central Government is represented by the Governor-General in Council. The Act does not place any limit to the number of members of the Governor-General's Council. The number of members is now seven. It includes the Commander-in-Chief, who is the Army Member, the Home Member, the Finance Member, the Law Member, the Commerce Member, the Member in Charge of Education, Health and Lands and the Member in Charge of Industries and Labour. Of these, three members have been Indians since practically the introduction of the Montagu-Chelmsford Reforms. It is laid down that three of the members of the Governor-General's Council must be persons who have been, for at least ten years, in the service of the Crown in India, and one must be of not less than ten years' standing as a barrister of England or Ireland or as a member of the Faculty of Advocates in Scotland or as a pleader of an Indian High Court. The Governor-General's Council is also called the Governor-General's Executive Council. The Governor-General himself has charge of the portfolio of the Foreign and Political Department; and as Viceroy he is the link between British India and Indian Princes. The members of the Executive Council are appointed by the Crown on the recommendation of the Secretary of State for India and their term of appointment is for five years under normal conditions. There are restrictions on the power of the Governor-General-in-Council to make war or treaty.

Governor-General's Council

The Governor-General of India is appointed by His Majesty by warrant under the Royal

Governor-General

Sign Manual from among British public men. His term of office is ordinarily for five years.

The Instrument of Instructions to the Governor-General directs that he shall carry on the administration of the Central subjects in harmony with the wishes of the people as expressed by their representatives in the Indian Legislature, so far as the same will appear to him as just and reasonable. The Governor-General can, however, in special and extraordinary circumstances, completely override his Executive Council and "disregard the most fully considered expression of opinion" of the Indian Legislature. In financial, legislative and administrative matters he possesses very extraordinary powers such as withholding of assent to any Bill, Central or provincial or reservation of such Bill for His Majesty's pleasure. He may promulgate ordinances for the peace and good government of India or any part thereof for a period of not more than six months from the date of promulgation, etc. The Governor-General possesses special powers with reference to certain provincial measures.

Central Subjects

The subjects of legislation and administration are divided into two classes, namely, the Central and provincial subjects. The Central subjects are those entrusted to the Central Government for legislative and executive action. The Central subjects include such matters as defence ; foreign affairs and relations with Indian States ; communications, posts and telegraphs ; major ports, navigation and shipping ; currency and coinage, public debt ; commerce and companies ; customs ; income-tax ; criminal and civil law and procedure ; all-India services, etc.

Besides administering the Central subjects, the Government of India exercises its power of superintendence over the provincial governments, safeguards the administration of central subjects in the Provinces, decides disputes between the Provinces, safeguards the civil services in India, etc. Further, the Central Government exercises its power of superintendence, direction and con-

trol over the administration of all subjects in areas of British India not included within the boundaries of the Governors' Provinces.*

Indian Legislature

The Indian Legislature consists of two Chambers, namely, the Council of State and the Indian Legislative Assembly. The Council of State consists of not more than sixty members. Out of these thirty-three are elected and the rest nominated. It is laid down that not more than twenty of the members of the Council of State shall be officials. These generally include two out of the seven members of the Governor-General's Executive Council.

Council of State

The term of the Council of State is five years. The President is now a nominated non-official. Though the Council of State possesses conjoint powers with the Indian Legislative Assembly except in the matter of voting on the items of the Finance Bill, in actual practice, the Upper House occupies a less important position than the other Chamber. The franchise of the Council of State is of a very restricted nature. The thirty-four elected members represent electorates having a total of about twenty thousand voters.

Legislative Assembly

It is laid down that the Indian Legislative Assembly shall consist of members nominated or elected in accordance with rules made under the Act. The number fixed by Section 63B (2) of the Act was one hundred and forty. There

* Discussing the question of the constitutional position of the Government of India the Simon Report states : "The Government of India, is a subordinate official government under His Majesty's Government, though in actual practice this relation of agency is qualified by the extent to which (1) authority is left in the hands of the Government of India to be exercised without reference to, or orders from, the Secretary of State and (2) influence is exerted by the Indian Legislature upon the acts and policies of the Central executive".

is, however, provision for increasing the total number of members of the Assembly as fixed and to so vary the proportion that the classes of members bear one to another, so that at least five-sevenths of the members shall be elected members and at least one-third of the other members shall be non-official members. The Indian Legislative Assembly at present consists of 146 members, 105 of whom are elected, while 26 are official members and 15 nominated non-officials.* The President of the Assembly is now a member of the Assembly elected by the House and approved by the Governor-General. There is also an elected Deputy-President. The normal term of the Indian Legislative Assembly is three years. The Governor-General has, however, the power to dissolve it before the expiry of the term of three years, or to extend it in special circumstances, if he so thinks fit. The elected members of the Assembly are returned by electorates having a total of 1½ million voters only. A feature of the constitution was the continuance of communal electorates, especially for Mahomedans and Europeans, and the extension of the principle to the Sikhs in the Punjab, non-Brahmins in Madras and Mahrattas in Bombay; although it was acknowledged that it served as "a very serious hindrance to the development of the self-governing principle".

Powers and Functions The Indian Legislature has power to make laws for all persons, courts, places, and things, within British India, for all subjects of His Majesty and servants of the Crown within other parts of India and for all

*Include a person nominated as the result of an election held in Berar.

Indian subjects of His Majesty without and beyond as well as within British India. This general legislative power is subject to certain important qualifications. There is a number of specified matters in which the Indian Legislature has no power to make any law, unless expressly so authorised by the British Parliament. The previous sanction of the Secretary of State in Council is needed for legislation in certain other matters. The Governor-General's previous sanction is needed in matters relating to or affecting certain subjects such as public debt or public revenues of India, etc. It has already been pointed out how absolute is the power that the Governor-General exercises by means of certification of bills, promulgation of ordinances and making of regulations. While as a general rule, legislation in Central subjects is entrusted to the Central legislature and legislation in provincial subjects to the provincial legislatures, the Central legislature is, in theory, entitled to legislate for the whole field.

The Budget

Expenditure on certain specified heads is authorised by the Governor-General in Council without being voted. Except the charges for the civil secretariat of the Army Department, nearly the whole of the Army expenditure, for instance, belongs to the non-voted list of expenditure. But in accordance with directions given by the Governor-General, it has been the practice in the Indian Legislature to discuss Army expenditure as a whole, though no vote on it can be taken. The expenses of the political department, which concerns itself with relation between the Crown and the Indian States, are also classed as non-votable expenditure and as such are excluded from the vote of the Indian Legislature.

The Budget is presented to both the Chambers simultaneously and discussions on the main principles take place in both chambers. It is to the Assembly, however, that the demands for grants are submitted and it is the Assembly which can grant or withhold supply. The Act provides for the restoration of a rejected demand for grant by the exercise of special powers by the Governor-General in Council. This power has been exercised on numerous occasions.

Members of the Legislature have the right to ask questions, put supplementary questions and move resolutions. Even when carried, the resolutions are of a merely recommendatory character.

There is provision for the holding of Joint Committees, Joint Conferences and Joint Sittings for avoiding or composing differences between the two Chambers.

Dyarchy in the Provinces

The Montagu-Chelmsford scheme of constitutional reforms sought to bring about in each Governor's Province a system of government which is described as dyarchy in the Provincial Executive. In matters in which the interests of the provinces essentially predominate, the provinces are to have acknowledged authority of their own. The provincial subjects are divided into two groups, namely, reserved subjects and transferred subjects. The agency functions in relation to the central subjects are included in the reserved subjects. The reserved subjects include such subjects as land revenue and land laws; police and prisons; administration of justice; etc. Among the transferred subjects are local self-government, education, other than European and Anglo-Indian, agricultural and industrial development, etc.

Central control

It is laid down that each province shall be governed, in relation to reserved subjects, by the Governor-in-Council, and in relation to transferred subjects by the Governor acting with ministers. In respect of the transferred subjects, the powers of superintendence, direction and control of the Central Executive over the Provincial Governments are to be exercised with certain qualifications. It was intended that in the transferred sphere the ministers should be allowed to work as far as possible, without any interference, to fulfil their responsibility to the Council and the electorate. Although it is laid down that the authority of the Governor-General in Council in respect of the reserved

subjects should remain unimpaired, the clear purpose of the Government of India Act is that in the administration of these subjects, as also other subjects, due regard is to be paid to the wishes of the people.

There are altogether ten Governor's provinces. These are Bengal, Bombay, Madras, the United Provinces, the Punjab, Bihar and Orissa, the Central Provinces, Assam, Burma and the North-West Frontier Province.

Provincial Executive

The Governors of the Presidencies of Bengal, Bombay and Madras are appointed by His Majesty by warrant under the Royal Sign Manual from among British public men, while the Governors of the other provinces are appointed from among senior members of the Indian Civil Service. The Governor is not paid the same salary in all the provinces. In each of these provinces there is a Governor's Council. The number of members of the executive council is not the same in every province. The executive councils in Bengal, Bombay and Madras, for instance, have each four members.* Two of these are members of the Indian Civil Service and two appointed from among non-official Indians. The members of the executive council are appointed by His Majesty under the Royal Sign Manual. The members of the executive council do not get the same salary in all the provinces.

Ministers are appointed by the Governor from among non-official elected members of the Legislative Council. A minister holds office during the pleasure of the Governor. No minister shall hold office for a longer period than six months, unless he is or becomes an elected member of the Legislative Council. There may be paid to any minister so appointed in any province, the same salary as is payable to a member of the executive council in that province, unless a smaller salary is provided by vote of the Legislative Council of that province. All the provinces have not the same number of ministers.

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* As a retrenchment measure, there was a reduction in the number of members of the Bombay Executive Council in 1933, and also in Madras.

In extraordinary circumstances, the Governor has power to overrule the ministers in the transferred departments and carry out his policy. In such cases in which a ministry cannot be formed to carry out his policy, the Governor has the power to assume control of the transferred departments and authorise expenditure not sanctioned by the legislature. Similarly, although in normal circumstances, the Governor acts on the advice of his executive council in regard to the reserved subjects, he has the power to overrule the executive council. In the reserved departments the Governor has also the power to adopt legislation and authorise expenditure not approved by the Legislature. The Governor has also the power to pass a Bill relating to a reserved subject in case of the failure on the part of the provincial Legislative Council to pass it, if he thinks such action essential to the discharge of his responsibility for the subject. It is laid down that when an Act has been assented to by the Governor-General, he shall send to the Secretary of State for India an authenticated copy of the Act. Finally, His Majesty in Council has the power to disallow Acts of provincial Legislative Councils. A very elaborate procedure has been laid down in such cases.

Governor's Powers

The Governor enjoys emergency powers of certifying Bills and authorising such expenditure as may, in his opinion, be necessary for the safety or tranquillity of the province, or for carrying on the work of any department. The latter proviso is extremely wide and may be interpreted to include expenditure in regard to transferred departments also. The provision regarding Acts certified by the Governor-General, requiring them to be laid on the table of each House of Parliament for eight days applies in the case of certified Provincial Acts also.

The Legislature

In accordance with the terms of the Government of India Act, the Provincial Legislative Council has the authority, subject to certain conditions, to make laws for the peace and good government of the province.* The usual term

* The Council cannot, however, without the previous sanction of the Governor-General make, or take into consideration,

of a provincial Legislative Council is three years. The Governor has, however, power to extend the period, in special circumstances, or dissolve it before the expiry of the usual period. In the latter case, a new Council is to be constituted within six months, or with the sanction of the Secretary of State, within nine months from the date of dissolution. In some provinces the life of the council has been extended repeatedly e.g. in Bengal, where the same Council is continuing for eight years.

Since the expiry of the first four years the provincial Councils have enjoyed the power of electing their own Presidents. The Deputy President has since the inauguration of the new constitution been an elected member of the Council.

The Government of India Act of 1919 provides that at least 70 per cent. of the members of Provincial Legislative Councils shall be elected members and that not more than 20 per cent. shall be official members. The number

Restrictions on powers of Councils

any law affecting such matters as imposing or authorising the imposition of any new tax, other than those which have been specifically exempted from this provision by rules; the public debt of India; the customs duties, or any other tax which the Government of India is authorised to impose; the relation of the Government with foreign powers or states; the discipline or maintenance of any part of His Majesty's Naval, Military or Air Forces; or affecting any power expressly reserved to the Governor-General in Council or legislation reserved for the central legislature.

There are, besides, certain subjects on which the power of voting and discussion has been withheld from the Council. These are: (1) interest and sinking fund charges on loans, (2) expenditure of which the amount is prescribed by or under any law, (3) salaries and pensions of persons appointed by or with the approval of His Majesty or by the Secretary of State in Council, and (4) salaries of the Judges ot the High Court and the Advocate-General.

of nominated officials and non-officials varies from time to time. The figures quoted in the table below cannot, therefore, be treated as constant.

Table showing the Constitution of the Provincial Legislative Councils, under the Act of 1919

Provinces	Statutory Minimum	No. of Elected Members	Nominated Officials, including Executive Councillors	Nominated Non-officials	Total
Bengal	125	114	14+4	8	140
Madras	118	97	9+3	25	134
Bombay	111	85	13+2	12	112
United Provinces ...	118	100	15+2	7	124
Punjab	83	70	13+2	9	94
Bihar and Orissa ...	98	76	12+2	16	106
Central Provinces ...	70	54	7+2	8	71
Assam	53	39	5+2	7	53
Burma	92	80	14+2	7	103
N. W. F. Province ...	40	28	5+1	6	40

It has to be borne in mind in this connection that the changes in the constitution of the provincial government and legislative council in Burma were introduced in 1923 and not simultaneously with the constitutional reforms introduced in 1921. The inauguration of the N. W. F. Legislative Council was made on April 20, 1932. Since 1923, Coorg also has a Legislative Council of 20 members, five of whom are nominated. The Council has legislative, deliberative and interrogatory powers.

The Franchise

The qualifications of electors are based upon the principle of residence within the constituency and the possession of certain property as indicated by the payment of land revenue, rent or local rates in rural areas, of municipal rates in urban areas, and of income-tax generally. All retired and pensioned officers of the Indian Army also enjoy the franchise. The standard of property qualifications differs from province to province, and also within the same province between different communities, "where the social and economic differences justified the discrimination". No person is allowed to

have his name registered on the electoral roll of more than one general constituency, but a person may vote in more than one special constituency if he possesses the requisite qualifications in respect of them.

Provisions similar to those for the central Legislature regarding communal electorates apply to the case of the provinces. The seats allotted to the depressed classes, through nomination, in the different provinces are as follows:—Madras 10, C. P. 4, Bombay 2, Bihar and Orissa 2, Bengal 1, and U. P. 1. Special provision for nomination to secure the representation of labour was also made. Separate electorates have also been created for Indian Christians, Anglo-Indians and Europeans. A University seat is provided in each province except Assam and the North West Frontier Province; Bengal has two such seats.

Chief Commissioners' Provinces

Besides the Governors' Provinces enumerated above there are several Provinces administered by Chief Commissioners. These are Beluchistan, Delhi, Ajmer Merwara, Coorg, Andaman and Nicobar Islands. Of these Coorg has a council, as already stated.

Future Advance

In the preamble to the Government of India Act it is laid down that the British Parliament reserves to itself the right of determining the time and manner of India's future advance on the path of self-government. The nature and extent of this advance, it is declared, are to be guided by the co-operation received from, and the limit upto which it is found that confidence can be reposed upon, those on whom the new opportunities of service are conferred. Progressive Indian opinion has since the insertion of this condition in the preamble of the Government of India Act vigorously contested that its implications are opposed to the legitimate and natural interests of India and prejudicial to her free development as a self-governing country. The Act also provided for an enquiry after ten years, which, however, had to be precipitated by an

amendment of the Act, when the Simon Commission was appointed in 1927.

III

The Indian States

The parts of India other than British India are under the administration of a number of more or less independent or semi-independent hereditary rulers or Princes, each governing his territory under the suzerainty or overlordship of the British Crown. These tracts are popularly known as the (Native, or Feudatory, or Protected, or) Indian States. The Indian States are 562 in number, with areas ranging from 85,000 to 49 square miles. They are, as the Montagu-Chelmsford Report says, in all stages of development, patriarchal, feudal, or more advanced, while in a few States are found the beginnings of representative institutions. "The characteristic features of all of them, however, including the most advanced, are", the Report adds, "the personal rule of the Prince and his control over legislation and the administration of justice."

The Chamber of Princes

In accordance with the suggestion of the Montagu-Chelmsford Report, that there should be a permanent consultative body, mainly composed of representative Princes for the discussion of matters which affected the States generally, or, in which they were commonly concerned, such a body was brought into existence under the name of Narendra Mandal or the Chamber of Princes by Royal Proclamation on the 8th February, 1921. The Duke of Connaught performed the ceremony of inauguration of the Chamber, on behalf of the King-Emperor, in the Dewan-i-Am at Delhi. The Royal Proclama-

tion which was read on the occasion contained the following significant passage: "In my former Proclamation I repeated the assurance, given on many occasions by my Royal Predecessors and myself, of my determination ever to maintain unimpaired the privileges, rights, and dignities of the Princes of India. The Princes may rest assured that this pledge remains inviolate and inviolable".

Constitution and functions

The inauguration of the Chamber of Princes gave the rulers of States opportunities of "comparing experience, interchanging ideas, and forming mature and balanced conclusions on matters of common interest". The Chamber is not an executive but a deliberative, consultative and advisory body. It meets annually in its own Council House in New Delhi. The Chamber nominally consists of 109 Princes who are members in their own rights besides twelve other representative members chosen from 127 rulers of other States (which constitute the second division States) by a system of group voting.

The Viceroy is the President of the Chamber. It has a Chancellor and Pro-Chancellor elected from among its members. It has also a Standing Committee consisting of seven members including the Chancellor and the Pro-Chancellor. The Standing Committee advises the Viceroy on matters referred to it by him, and proposes for his consideration "other questions affecting Indian States generally or which are of concern either to the States as a whole or to British India and the States in common".

The Chamber is precluded from discussing treaties and internal affairs of individual States, rights and interests, dignities and powers, privileges and prerogatives of individual Princes and Chiefs, and the actions of individual rulers. It is further definitely laid down that the institution of the Chamber shall not prejudice in any way the engagements or the relation of any state with the Viceroy or Governor-General (including the right of direct correspondence), nor shall any recommendation of the Chamber in any way prejudice the right or restrict

the freedom of action of any State. At the annual session of the Chamber in February, 1929, a resolution was passed, according to which the proceedings are no longer confidential and are ordinarily open to the public. It has to be noted that some important States, e.g., Hyderabad, Mysore, Travancore, Kashmir, Baroda, Bhopal and Gwalior, have either not formally joined the Chamber, or have withdrawn from it.

Policy of Association

The establishment of the Chamber, for all practical purposes, abrogated the principle according to which each State had been treated by the British Government in India as an isolated unit. This was a policy which discouraged joint consultation and joint action of the Rulers of States. The practice, which has grown up since the war, of inviting Rulers of Indian States, along with British Indian delegates, to represent India at the League of Nations, and at sessions of the Imperial Conference, and lastly at the Round Table Conference, has brought about a definite breach in the old policy of isolating the States, by seeking their co-operation. His Highness the Maharaja of Patiala for instance, represented the Ruling Princes of India in the Imperial War Cabinet. His Highness the Maharaja of Bikaner attended Cabinet meetings and Peace Conferences, affixing his signature to the Treaty of Versailles.

IV

An influential section of progressive Indians regarded the Montagu Chelmsford scheme of Reforms as halting and limited in its scope. Besides, certain incidents created a sense of resentment among the people. This feeling found expression in the non-co-operation move-

ment initiated by the Indian National Congress at the instance of Mr. M. K. Gandhi. Efforts were made soon after Lord Reading had assumed the Governor-Generalship of India to bring about a rapprochement between the Government and the Congress but these proved fruitless. The financial stringency, the anomalous position of Indian ministers under the dyarchic system in the provinces, the exercise of overriding powers by the executive, in conjunction with such circumstances as the inability of the Government of India to secure equality of treatment for Indians in various parts of the British Empire, etc., added to the smouldering discontent.

Montagu Reform and After

In March, 1922, Mr. Montagu resigned from the Cabinet and was succeeded by Viscount Peel as Secretary of State for India. Mr. Gandhi was arrested and sentenced to six years' rigorous imprisonment. In the meantime, the first term of the Indian Legislative Assembly and the Provincial Legislatures came to an end and in the new elections an influential section of the Congress, under the name of Swarajists, with Mr. C. R. Das as leader, swept the polls. And in 1924 the British Labour Party came into power for a short period.

In the newly constituted Indian Legislative Assembly, there was a renewed demand for a revision of the Government of India Act, with a view to securing for India Dominion Status, together with responsible government for the provinces. As a protest against the attitude of the Government in this matter, the Assembly threw out the first heads under the demand for grants and refused leave to introduce the Finance Bill.

In the meantime, the Government of India appointed a Committee consisting of officials for exploring the

Muddiman Report

possibilities of introducing changes in the constitution that might result in an improved working of the machinery. This was followed by the appointment of another Committee under the Chairmanship of Sir Alexander Muddiman, Home Member, for enquiring into the working of the Government of India Act. The majority of the Committee thought that they were not in a position to recommend any remedies inconsistent with the structure, policy and purpose of the existing Act. The minority consisting of Sir Tej Bahadur Sapru, Sir Sivaswami Aiyer, Mr. Jinnah and Dr. Paranjpye, however, held that no minor remedies short of a fundamental remodelling of the Act could be expected to produce any substantial results. Eventually the results of these enquiries led to the adoption of minor changes, of a technical character, in accordance with the recommendations made by the majority of the Committee.*

Indian Statutory Commission

It was on the 8th November, 1927, that Lord Irwin, who had succeeded Lord Reading as Viceroy in April, 1926, announced the appointment of the Indian Statutory Commission in the course of a speech before the Indian Legislative Assembly. The Commission was charged with "inquiring into the working of the system of government, the growth of education, and the development of representative institu-

National Demand

* In September, 1925, Sir Alexander Muddiman moved in the Indian Legislative Assembly a Resolution recommending the acceptance of the principles underlying the majority report of his Committee. Pandit Motilal Nehru, leader of the Congress Swarajist Party, in an amendment to Sir Alexander Muddiman's Resolution formulated the "National Demand." This was to the effect that "certain political reforms, practically amounting to the grant of immediate Dominion Status should be conceded by Parliament, and that a Round Table Conference between representatives of the British Government and representatives of political India should meet to discuss the ways and means of implementing these reforms".

tions, in British India, and matters connected therewith," and "to report as to whether and to what extent it is desirable to establish the principle of responsible government, or to extend, modify, or restrict the degree of responsible government then existing therein, including the question whether the establishment of second chambers of the local legislatures is or is not desirable".* Subsequently, Sir John Simon secured an extension of these terms of reference which enabled the Commission to examine the methods by which the future relationship between the Indian States and British India Provinces might be adjusted.†

* The Commission was composed of Sir John Simon (Chairman), Viscount Burnham, Lord Strathcona, Hon. Edward Cadogan, Mr. Stephen Walsh, Major Attlee and Colonel Lane-Fox. Mr. Walsh resigned and was succeeded by Mr. Vernon Hartshorn.

The Indian States Committee

† Another important enquiry was undertaken at the request of the Princes by the Indian States Committee, appointed in December, 1927, to investigate the relationship between the Paramount Power and the Indian States and to make recommendations for the adjustment of financial and economic relations between British India and the States. The Committee, which had Sir Harcourt Butler as its Chairman, is generally known as the Butler Committe. It reported early in 1929. It was urged on behalf of the Indian Princes, before the Butler Committee that the occasions for the exercise of paramountcy should be defined in a more precise manner than at present. Among the recommendations of the Committee were: (*a*) that the Princes should not be transferred without their own agreement to a relationship with a new government in British India responsible to an Indian Legislature; (*b*) that in future the Viceroy—as distinguished from the Governor-General in Council—should be the agent for the Crown in regard to all dealings with the Indian States; and (*c*) that an expert Committee on which

All Parties Conference

All shades of Indian political opinion combined in denouncing the all-British constitution of the Statutory Commission and urged its rejection. The Indian Legislative Assembly accepted Lala Lajpat Rai's resolution repudiating the Commission by a majority of votes. Further, an All Parties Conference, which met at Delhi early in 1928, and then in May at Bombay, appointed a sub-committee (known as the Nehru Committee) to draft a constitution providing for full responsible government for India.*

Nehru Report

The Nehru Committee adopted the Dominion form of responsible Government as the basis of their proposals. Though the Committee did not visualise a federation with the States, they combated some of the anti-national demands of the States made before the Butler Committee and urged upon the States a policy of trusting the British Indian statesmen.

Indian Central Committee

Sir John Simon, Chairman of the Indian Statutory Commission, soon after his arrival in India in February, 1928, proposed in a letter to the Viceroy that the Commission should take the form of a "Joint Free Conference", consisting of the seven members of the Commission along with an equal number of members chosen from among the members of the Indian Legislature, presided over by Sir John Simon himself. By October 1928, when the Commission returned from England, all the councils, except that of the Central Provinces, and the Indian Legislative Assembly had appointed committees to work with the Simon Commission. The Central Committee consisted of 3 members nominated by the Council of State, a member of the Council of State to represent the Sikh community,

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the princes are to be represented, should be appointed to enquire into the financial relations between the States and British India. This 'fact-finding' Committee was constituted and it reported in 1930.

* The report of the sub-committee was published in August, 1928. It was signed by Pandit Motilal Nehru, Sir Ali Imam, Sir Tej Bahadur Sapru, Mr. M. S. Aney, Sardar Mangal Singh, and Messrs Shuaib Quereshi, Subhas Chandra Bose and G. R. Pradhan.

besides five members of the Indian Legislative Assembly nominated by the Governor-General, and had Sri Sankaran Nair as Chairman.*

Lord Irwin's Announcement

His Excellency Lord Irwin announced, after his return from a short trip to England on the 31st October, 1929, that he had been authorised by the British Government to declare that the natural goal of India's advance was Dominion Status and that after the publication of the Report of the Indian Statutory Commission, a Round Table Conference would be convened to seek a common basis on which could be formulated proposals to be placed before Parliament. Although this announcement helped to ease the situation for a while, the Congress declared against participation in the proposed Conference as Lord Irwin was not able to assure that the sole function of the Conference would be to draft a constitution conferring Dominion Status on India. Soon after Mr.

Proposal for Round Table Conference

* Sir John Simon in a letter dated the 16th October, 1929, to Mr. Ramsay Macdonald, Prime Minister, suggested that after their work had been completed a Conference should be set up in which "His Majesty's Government would meet both representatives of British India and representatives of the States (not necessarily always together) for the purpose of seeking the greatest possible measure of agreement for the final proposals which it would later be the duty of His Majesty's Government to submit to Parliament". In reply, the Prime Minister in his letter dated the 25th October, 1929, intimated to Sir John Simon that after the Commission had submitted their Report and His Majesty's Government had been able in consultation with the Government of India to consider it in the light of all the material then available, they proposed "to invite representatives of different parties and interests in British India and representatives of the Indian States to meet them, separately or together as circumstances may demand, for the purpose of conference and discussion in regard both to the British India and All-India problems".

Gandhi started the civil disobedience movement with his dramatic march to Dandi for the preparation of salt.

The Report of the Simon Commission was issued in June, 1930. Prior to this the Reports of the Provincial Committees had been published, followed by the Report of the Indian Central Committee issued at the end of 1929.

Recommendations of the Statutory Commission

The Simon Commission recommended at the outset that the new constitution "should as far as possible contain within itself provision for its own development". They also emphasised that any constitutional changes recommended for British India must have regard to a future development when India as a whole, not merely British India, will take her place among the constituent States of the Commonwealth of Nations united under the British Crown. "It inevitably follows," the Commission added, "that the ultimate constitution of India must be federal, for it is only in a federal constitution that the units differing so widely in constitution as the Provinces and the States can be brought together while retaining internal autonomy".

The Commission recommended that in the provincial sphere the franchise should be extended, the number of members of legislatures increased, the official block removed and the council made a wholly elected body. It recommended responsible ministers subject to the condition that the Governor would have the right, if he thought fit, to appoint one or more ministers, whether official or non-official, whether Indian or British who were not members of the legislature.

In the Central sphere, the Commission recommended that the Council of State should continue with the existing functions as a body of elected and nominated members chosen in the same proportion as at present, the election being indirectly carried through provincial second chambers, if such bodies are constituted, or, failing this, by the provincial councils. The present Indian Legislative Assembly, the Commission proposed, should be constituted as a new body called the "Federal Assembly", the members of which

would not be directly elected by constituencies of voters, as at present, but would be mainly chosen by the provincial councils themselves. The official members would consist of such members of the Governor-General's Council as sit in the Lower House, together with twelve other nominated officials.

Reception of Report

The Report met with very severe condemnation from various quarters in India. Even Indian public men of moderate views wanted to be assured that the Report shall not form the basis of discussion at the Round Table Conference, a proposition which the Government accepted.

V

The Round Table Conference met in London on the 12th November, 1930.* It consisted of 16 British delegates including eight

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The Government of India Despatch

*In a Despatch dated September 20, 1930, issued on the eve of the convocation of the Round Table Conference the Government of India examined the recommendations of the Indian Statutory Commission and submitted their proposals for "the further progress which will now be made towards the development of responsible government in India as an integral part of the British Empire." The Government of India accepted the recommendations of the Statutory Commission for the abolition of dyarchy in the provincial sphere and supported their main proposals regarding the reconstruction of provincial governments. With reference to the Central Government the conclusion of the Government of India was that "it would seem necessary to look to some solution on the lines of a unitary government". It was suggested that such government "while containing a definite official element and not formally responsible to the Indian Legislature, would yet include an appreciable popular element consisting of elected members of the legislature, who might command sufficient support in that body to afford in normal circumstances the promise of reasonable harmony between the executive and the legislature".

With reference to relations between British India and the States, the Despatch observed: "A federation of all-India is

members of the Labour Party, the Indian States delegation consisting of nine ruling Princes and seven State officials and the British Indian delegation which consisted of fifty-seven members. The British Indian delegation did not include any representative of the Congress. The Conference was opened by His Majesty the King and was held under the Chairmanship of Mr. Ramsay Macdonald, Prime Minister.

First session of Round Table Conference

Several Committees and sub-committees were constituted to examine and thresh out the different problems separately. The most important of these was the Federal Structure Sub-Committee of which Lord Sankey, Lord Chancellor, was Chairman. Among the other sub-committees were the Minorities Sub-Committee with Mr. Ramsay Macdonald as Chairman, the Defence Sub-

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still a distant ideal and the form which it will take cannot now be decided". "We think", the Despatch said, "that the way should be left open for the continued existence, if necessary, of the British India Legislature for British India purposes, and for the possible creation of an all-India legislature in which both the states and the provinces would be represented."

The Government of India mentioned the purposes which His Majesty's Government must safeguard, namely, defence, foreign relations, internal security, financial obligations, financial stability, protection of minorities, protection of the rights of the services recruited by the Secretary of State, and the prevention of unfair economic and commercial discrimination. In the opinion of the Government of India the ultimate control of these matters must under the present conditions reside in the British Parliament. "The conditions of the problem suggest to us", they added, "the importance of defining as clearly as possible the purposes which Britain must continue to safeguard in India and making it plain that when these purposes are not concerned India should be free to manage her own affairs". Commenting on the Despatch a British journal observed: "The despatch itself is a studiously guarded and quite colourless document. It would seem that the Viceroy, in order to carry his Council with him, has had to expunge any definite views on any subject".

Committee, the Provincial Constitution, Burma, Services and Franchise Sub-Committees.

Proposal of Federation

At the very first sitting of the Conference the Indian Princes declared themselves in favour of an Indian Federation to which they were invited to join. The Federation, it was contemplated, would establish "a federal government and a federal executive, embracing both the British Indian Provinces and the Indian States in one whole, associated for common purposes : but each securing control of their own affairs, the Provinces autonomous and the States sovereign and autonomous". This attitude on the part of the Indian Princes brought about a complete transformation in the situation. The proposals relating to safeguards, and the demands of some of the minorities, however created a very uncertain position. The Conference was adjourned on the 19th January, 1931, with a view to exploring the avenues of a communal settlement and to sound public opinion on the various issues raised.

Prime Minister's Declaration

In his concluding speech, the Prime Minister announced that His Majesty's Government had agreed, with certain safeguards during a period of transition, that "responsibility for the Government of India should be placed upon legislatures, central and provincial" and that "it will be a primary concern of His Majesty's Government to see that the reserved powers are so framed and exercised as not to prejudice the advance of India through the new Constitution to full responsibility for her own government". The Prime Minister, in conclusion, expressed the hope that as a result of the labours at the Round Table Conference India would come to

possess 'the only thing which she now lacks to give her the status of a Dominion', viz., 'the pride and the honour of responsible government'.

Genesis of the Federal idea

The conception of a federation embracing the States and British India can not be said to be absolutely new. Although the idea had, from time to time, called forth casual references in State documents and speeches of public men, the institution of the Narendra Mandal, in pursuance of the recommendation of the Montagu-Chelmsford Report, brought it, for the first time, to the realm of practical politics. Developments in connection with the Narendra Mandal (Chamber of Princes) created, however, the impression that the position of the Indian States was likely to be used as an argument against the grant of responsibility in the Central Government. Indian politicians first indicated their opinion in this matter through the pages of the Report of the All-Parties Conference (1928). In the Report it is stated that "if the Indian States would be willing to join such a federation (i.e., a perpetual union of several sovereign states) after realising the full implications of the federal idea we shall heartily welcome their decision and do all that lies in our power to secure to them the full enjoyment of their rights and privileges."

The Indian States Committee (1928-29), emphasised the 'need for great caution in dealing with any question of federation' and made the very ingenious suggestion that the States should be consulted with regard to any proposal for the grant of responsibility in the Centre. In view of these developments it was not surprising that Indian statesmen began to turn their attention towards a rapprochement with the States. The announcement relating to the holding of the Round Table Conference brought these issues to a fore.

The Princes also were feeling the necessity of a readjustment in the light of changed circumstances. Their desire to co-operate was partially actuated, according to Professor Keith, with the object of securing a voice in such issues as defence and customs

policy.* "At the same time", adds the same writer, "they were anxious to secure their rights against the process of authoritative interpretation by the Crown, as evidenced by the ruling of Lord Reading in 1926, that the Nizam of Hyderabad must accept without argument the decision of the British Government to refuse to hand back to him the control of Berar. The opportunity of obtaining a definition and reduction of powers of paramountcy seemed to be presented by the anxiety of the British Government to inaugurate a measure of responsibility in the Central Government, for to make the experiment safe it was desirable to create a Conservative Central Legislature, and this could be best accomplished by granting more than numerically proportionate representation to the States. It was assumed that their representatives in the legislature would solidly support the wishes of the Crown. In return the Princes felt that they might justly expect the Crown to consent to leave unused, save in case of grave misrule, its para-

The Princes motives

*In this connection, the Report of the Joint Committee states: "The existing arrangements under which economic policies, vitally affecting the interests of India as a whole, have to be formulated and carried out are being daily put to an ever-increasing strain, as the economic life of India develops . . . . . On the one hand, with certain exceptions, the States are free themselves to impose internal customs policies, which cannot but obstruct the flow of trade. Even at the maritime ports situated in the States, the administration of the tariffs is imperfectly co-ordinated with that of the British India ports. On the other hand, tariff policies, in which every part of India is interested, are laid down by a Government of India and British India Legislature in which no Indian State has a voice, though the States constitute only slightly less than half the area and one-fourth of the population of India . . . . . . Moreover, a common company law for India, a common banking law, a common body of legislation on copyright and trademarks, a common system of communications, are alike impossible. Conditions such as these, which have caused trouble and uneasiness in the past, are already becoming, and must in the future increasingly become, intolerable as industrial and commercial development spreads from British India to the States".

mount authority."* This co-operation of motives resulted in the surprise declaration by the Princes.

It is not possible to discover the stages and the politicians responsible for bringing about a change in the outlook of the Princes; but neither the British Government nor the Government of India in their Despatch seemed to be aware of any possibility of the Princes' offer to federate.†

Irwin-Gandhi Pact

On their return to India some of the more prominent among the delegates to the First Indian Round Table Conference endeavoured to bring about a settlement between the Government and the Congress. As a result of this, Mr. Gandhi was released along with some other

* *The Governments of the British Empire* (1935), p. 554.

† In this connection the following message to the *Statesman*, from its 'special representative' at New Delhi, dated March, 29, 1930, will be of interest: "The Maharajas of Patiala, Bikaner and Alwar, the Nawab of Bhopal and other Princes are now in Delhi holding important conversations with Indian politicians, prominent amongst whom are Pandit Malaviya and Mr. Jinnah. The European Group are also represented.

"Pandit Malaviya advocates a Federal India in which the Princes would have a powerful voice reserved for themselves by constitutional right, and invites them to accept a self-governing British India as heir in full to all the rights of the British Crown and Parliament. In other words, he asks the Princess to be their own guarantors for their privileges and position.

"The present leaders of princely India show a marked disposition to give this view a careful, not to say sympathetic, hearing.

"The astonishing outburst of free speech in the hitherto almost monotonously correct Chamber of Princes a month ago indicates which way the wind blows. The Princes believe they have grievances. They are apparently not impressed with the Government of India to-day and may consider that now is the moment to join the largest crowd, which, while not necessarily composed of rodents, is engaged in evacuating an unseaworthy vessel. Something should be done about this".

Congress leaders, the civil disobedience movement was suspended, and a pact was agreed to by Lord Irwin and Mr. Gandhi. The pact was ratified by the Congress on the 31st March, 1931, on the eve of Lord Irwin's retirement from the Viceroyalty of India. The text of the main part of the Delhi Pact is given below:

"As regards Constitutional questions the scope of future discussions is stated with the assent of His Majesty's Government to be with the object of considering further the scheme for constitutional government of India discussed at the Round Table Conference. Of the scheme there outlined, Federation is an essential part; so also are Indian responsibility and reservations or safeguards in the interests of India for such matters as, for instance, defence, external affairs, the position of minorities, the financial credit of India and discharge of obligations. . . . Steps will be taken for the participation of the representatives of Congress in the further discussions".

Second session of R. T. C.

The settlement resulted in Mr. Gandhi attending the Second Round Table Conference, which met in London on September 7, 1931, as the sole representative of the Congress.* The Second session of the Conference met after the Labour Government had been superseded by the National Government in Great Britain.

* The number of delegates to the Conference was enlarged by the inclusion of some representatives of the smaller States of India as also of Mrs. Sarojini Naidu, Pandit Madan Mohan Malaviya, Sir Ali Imam, Mr. Rangaswami Iyengar, Maulana Shaukat Ali, Sir Mahammad Iqbal, Sir Purusottamdas Thakurdas, Mr. G. D. Birla, Mr. (now Sir) E. C. Benthall and Dr. S. K. Datta.

Although Mr. Ramsay Macdonald remained Prime Minister, the National Government had a predominantly Conservative element in it and this made a world of difference in the attitude and outlook of the British Government towards the whole question of Indian Constitutional reform.*

Communal difficulties

Some of the conservative rulers of Indian States emphasised the need of safeguards for the States and insisted that their subjects should be excluded from any direct representation. Owing to the disinclination on the part of the various minorities to agree to a settlement with the majority community, and the proposal to divide the Hindus into two camps by placing the depressed classes into a separate group, the Conference was not able to come to any decision in the matter of the communal problem. The Prime Minister in a statement to the delegates said that, if they failed to come to a common understanding in the matter the British Government would undertake to settle it "as wisely and justly as possible". In matters of defence and external affairs, financial control, and the various suggested safeguards, the nationalist point of view found itself in disagreement with the policy urged by His Majesty's Government.

* As the Rt. Hon. Wedgwood Benn, who was succeeded by Sir Samuel Hoare as Secretary of State for India, says in the course of a recent article in *The Political Quarterly* (July-September, 1935), the whole scene was, in fact, changed when Mr. Gandhi reached England. "A National Government was in power under unfettered Conservative influences. Though no change had been made in the phraseology of the legislative intent the temper of the Indian Administration was completely altered. Rigid repression took the place of conciliation . . . . . Press laws were passed which made the free expression of opinion difficult or impossible, and thus contact was lost with whatever public opinion Indian Nationalists represented . . . . In the negotiations for the new constitution the spirit of co-operation was also gradually abandoned. India dropped out of the picture".

Enquiry Committees

At the end of the Conference three important Committees were constituted, to investigate in India, (1) Questions of Franchise and Constituencies, (2) Problems of Federal Finance and (3) Specific problems arising in connection with the Finances of certain individual States. Lord Lothian, Lord Eustace Percy and the Rt. Hon. J. C. C. Davidson were the respective Chairmen of these Committees. To maintain touch with His Majesty's Government through the Viceroy, it was arranged to constitute a Consultative Committee consisting of some of the Indian delegates of the Conference. The Second session of the Conference came to a close on December 1, 1931.

'Dual Policy'

Soon after Mr. Gandhi's return from England, he was arrested early in January, 1932, and the Congress was declared a proscribed organisation. This was the beginning of the period during which Government followed the 'dual policy' of carrying on discussions and enquiries regarding constitutional changes, while the country was being ruled by ordinances and executive orders.

The Communal Decision

In accordance with the declaration made by Mr. Ramsay Macdonald at the close of the Second Round Table Conference, the Prime Minister announced on the 17th August, 1932, the decision of the British Government on the nature and extent of representation to be accorded to the different communities in the new scheme of constitutional reforms in the Provinces. These proposals are generally known as the Prime Minister's Communal 'Award'. The Premier's scheme of representation provides for separate constituencies for Mahomedans, Sikhs, Indian Christians, Anglo-Indians, Europeans, etc. Qualified voters of the Depressed classes will, in the terms of the Award, vote in General Constituency; but a number of seats will be assigned to them which will be filled by election from special consti-

tuencies in which voters belonging to the depressed classes only shall vote. Special seats for women, specifically divided among the various communities, are also provided for.

Poona Pact

The proposed arrangement was "subject to revision by agreement amongst the communities concerned". In one case, however, such revision has already been made. Mr. Gandhi expressed his opposition to separation of the depressed classes from the general body of Hindus. But as his protest went unheeded, Mr. Gandhi announced his intention of a fast unto death, in order to secure a revision of the terms. This resulted in a settlement according to which the depressed classes were not to be separated but were to vote with other Hindus in joint constituencies. They would further have an increased number of seats reserved for them. In future, the number of seats reserved for the depressed classes under the Poona Pact is practically double the number reserved under the Communal 'Award'. All the voters of the depressed classes in a general constituency will form an electoral college which will elect a panel of four candidates for each reserved seat by the method of the single vote. The four* persons securing the highest number of votes in such primary election shall be candidates for election by the general electorate. This arrangement is known as the Poona† or Yervada Pact which was agreed to on the 24th September, 1932, and accepted by the British Government.

An effort was made by Sir Samuel Hoare, Secretary of State for India, to separate the question of provincial autonomy from that of the introduction of responsibility in the federal sphere, and to proceed, 'for the present', with the solu-

* It was pointed out on behalf of Mr. Gandhi before the Hammond Committee that when the settlement was made it was understood that four was fixed as the maximum.

† For the text of the 'Award' and the Pact, see Appendix C, Chapter Four.

tion of the first problem. Along with this was the proposal to abandon the method of settling the Indian problem by the Conference method. Both these suggestions excited widespread opposition in India. Sir Tej Bahadur Sapru, along with some other delegates, took a leading part in condemning the attitude of the authorities in these matters. At the end of June, 1932, it was announced that His Majesty's Government had come to the decision of providing for provincial autonomy and federation in a single Bill, but that it was proposed to abandon the third session of the Round Table Conference. Later, in opening the autumn session of the Indian Legislative Assembly, early in September, 1932, Lord Willingdon announced on behalf of the British Government that they proposed to introduce constitutional reforms on the basis of an All-India Federation coupled with the widest practicable measure of responsible Government at the Centre and in the Provinces. His Excellency the Viceroy further said that His Majesty's Government had decided that it would be necessary to hold further discussion in London and that a small body of representatives of the States and of British India would be invited to meet them about the middle of November. Sir Tej Bahadur Sapru urged that persons possessing a really broad outlook should be selected for the purpose and that the representation of different schools of thought should be secured.

Changes by Stages

The Third session of the Round Table Conference was a short one. It met in London on the 17th November and concluded its deliberations on the 24th December, 1932. It was a much smaller body than the two preceding Conferences. The Congress was not represented on it and the British Labour Party took no

Third session of R. T. C.

part in its proceedings. Indian Christians, Women and Labour had no representation on it. The British delegation included four new members namely, Sir John Simon, Lord Irwin, Mr. J. C. C. Davidson and Mr. R. A. Butler. Sir N. N. Sircar, Mr. N. C. Kelkar and Pandit Nanakchand, among Indians, attended the Conference for the first time. As the general body of Sikhs expressed their desire to boycott the Conference as a protest against the communal award, a Sikh judge from the Patiala State was selected to attend it on behalf of his community and, except Sarila, none of the Indian States were represented by their rulers.

Amongst the matters considered by the Conference were the reports of the Lothian, Davidson and Percy Committees, the special powers of the Governor-General and Governors, financial and commercial safeguards, the power of Indian legislatures *vis a vis* the British Parliament, and the form of the States' Instrument of Accession. Many important matters, however, could not be broached by the delegates. Sir Samuel Hoare, Secretary of State for India, in his concluding speech at the final session of the Conference summed up the results of the inconclusive discussions of the Conference. A number of memoranda and statements was submitted to the Conference, the most important being the Joint Memorandum by Sir Tej Bahadur Sapru and Mr. M. R. Jayakar.

VI

The White Paper

After the Third Round Table Conference had concluded its proceedings His Majesty's Government proceeded with the drafting of their proposals in regard to the revision of the Indian Constitution. The proposed scheme of reforms

was embodied in a Parliamentary White Paper,* published in March, 1933. This was intended to form the basis of discussion by the Joint Committee of Parliament. The proposals were based on the assumption that the Government of India Act of 1919 would be repealed *in toto*, as the 'conception of a Federation of States and Provinces, and the process involved in its formation, necessitate a complete reconstruction of the existing Indian Constitution'.

Autonomous Provinces

The scheme envisages the conversion of the British Indian Provinces into autonomous units. These are to be equipped with legislatures, elected by a wider electorate than at present and a Council of Ministers, besides Governors. The Governor will, on behalf of the King, exercise executive authority in a Province. The Council of Ministers will be responsible to the legislature and electors. But provision is made to modify this responsibility by numerous reservations and safeguards, together with the grant of special and extraordinary powers to the Governor for intervention.

The Federation

Further, the British Indian Provinces and the Indian States are to be welded into an All-India Federation. There will be a Federal Legislature consisting of two Houses representative of the Indian States and the British Indian Provinces. It will be responsible for the control of policy in regard to federal matters and an executive will be chosen from among its members. The Princes will surrender a defined corpus of their present sovereign rights to the Federation retaining internal autonomy in respect of rights not so surrendered unaffected by any other consideration than the existing suzerainty of the Crown.

The control over such subjects as Defence, External Affairs and Ecclesiastical matters will be exercised by the Governor-General. The Governor-General, as such, will be the executive head of the Federation and as Viceroy will exercise the powers of the Crown in relation to the States and other matters outside the scope

* Command Paper 4268.

The Governor-General

of the federal constitution. The Governor-General will be endowed with various special and extraordinary powers of intervention and there will besides be numerous reservations and safeguards. The special responsibility of the Governor-General refers to such matters as the maintenance of order, the protection of minorities, the protection of the public services, and discrimination against England in matters of commerce and industry. The Governor-General and the Governors are invested with powers which may be exercised at any time in the sphere of self-government, at the Centre and in the Provinces, if in their discretion they deem it essential. The Governor-General will have special responsibility in the maintenance of the financial stability and credit of India.

Federal Court

The White Paper proposed the establishment of a Federal Court with both Original and Appellate jurisdictions in cases involving constitutional issues such as the spheres of the Federal, Provincial, and State authorities ; as also the setting up of a Supreme Court to act as a Court of Appeal in British India.

Parliamentary control

The Council of the Secretary of State is to be abolished and its place is to be taken by an Advisory Council consisting of a smaller number of members than at present, specially to safeguard the interest of the Services. In the Imperial sphere, the trend of the proposals seems to lie in the direction of tightening of control, rather than any relaxation.

Economic provisions, Services, Fundamental Rights

The White Paper specially recommended the establishment, removed from any possibility of political control, of a Reserve Bank and a Statutory Railway Board. Besides providing for the continued recruitment of the superior Services by the Secretary of State, the Services were assured as to their prospects and emoluments in detail. With regard to the proposal for a statutory guarantee of 'fundamental rights', it was suggested that these might subsequently find a place in the Royal pronouncement 'in connexion with the inauguration of the new Constitution'.

A Joint Committee of both Houses of Parliament was appointed early in April, 1933, to consider the future government of India and,

in particular, to examine and report upon the proposals contained in the White Paper. This committee was popularly known as the Joint Parliamentary Committee, and it consisted of thirty-two members, sixteen from each House. All the three British political parties were represented on the Committee. The Marquess of Linlithgow, who had visited India as Chairman of the Indian Agricultural Commission (1928), was elected Chairman of the Committee. The Committee received direction to call into consultation representatives of Indian States and British India, including Burma. Seven delegates from the Indian States, twenty-one from continental British India, and twelve from Burma were accordingly invited to participate in the deliberations of the Committee. These delegates, who were called 'assessors', sat with the Committee and were empowered to cross-examine witnesses and hold discussions with members of the Committee, but were neither entitled to vote on any issue nor to sign the report. Neither were they to submit any report to Parliament.

Joint Parliamentary Committee

The Committee had before them for consideration a number of memoranda on a variety of subjects. Besides a joint memorandum by the British Indian Delegation, several memoranda were submitted to the Committee by some members of the Indian Delegation on the proposals of the White Paper.* The Princes

Memoranda by Indian Assessors

* Sir Pheroze C. Sethna concerned himself with the question of the future of Aden in his Memorandum. Sir Akbar Hydari put in five Memoranda. He dealt with the White Paper proposals in general, and discussed specifically the federal scheme, the Central subjects, the size and composition of the federal legislature and Railways. Sir Manubhai Mehta discussed the problems of federal finance and constituent

also presented an important memorandum to the Committee. Members of the Indian Civil and other Services also presented their case before the Committee. The Secretary of State for India put up before the Committee several memoranda dealing with subjects such as the Financial implications of Provincial Autonomy and Federation; Federal Finance; the High Courts; Indian Railways; Instrument of Instructions; Burma; Indian Reserve Bank Legislation; etc. Various other papers, including Notes and Memoranda by members of the Committee, on important aspects of the proposed reform were also placed before the Committee. The Committee held 159 meetings and examined over 120 witnesses. The evidence included both written and oral evidence, some of which was considered by sub-committees of which there were four in number. The bulk of the evidence was however, considered by the Committee as a whole. The witnesses included the Secretary of State himself, assisted by Sir Malcolm Hailey, Sir Findlater Stewart and Sir John Kerr. It appears from the Report of the Committee that Sir Samuel Hoare replied to nearly 6,000 questions during the nineteen days over which his evidence extended. Amongst others who tendered evidence were Mr. Winston Churchill, ex-Governors of Provinces, representatives of Service and women's organisations, communal and commercial delegations, retired officials, and a number of other individuals, British as well as Indian. These witnessesses were examined not only by the members of the Committee but also by the 'assessors' from India.

Material before the Joint Committee

The joint memorandum by the British Indian Delegation was signed by H. H. The Aga Khan, Sir

powers. In their Notes both Sir Akbar Hydari and Sir Manubhai Mehta generally stressed the point of view of Indian States. Mr. (now Sir) A. H. Ghuznavi protested against the agitation against the Communal Award and iterated the claim of Bengal with regard to the export duty on jute. Begum Shah Nawaz dealt with the position of women. Mr. N. M. Joshi alluded to labour representation and franchise and also referred to the position of Labour Legislation under the proposals. (*Records,* Vol. III).

Abdur Rahim, Mr. M. R. Jayakar, Sir H. S. Gour, Sir Shafaat Ahmed Khan, Sir A. H. Ghuznavi, Sir Pheroze Sethna, Mr. Buta Singh, Sir Henry Gidney, Dr. B. R. Ambedkar, Sir Zafarulla Khan, and Mr. N. M. Joshi. The signatories stated the principal modifications that should, in their opinion, be made in the scheme in order to satisfy 'moderate public opinion in India' and indicated the reasons justifying the course of action suggested by them. In an appendix to the memorandum, the signatories attempt to answer the main criticisms levelled against the basic principles of the White Paper proposals specially in England. In their statement, the delegates throughout kept in view the declaration of policy made by the Prime Minister at the end of the First Round Table Conference, on behalf of the Labour Government and endorsed by the National Government and the British Parliament. They examined the White Paper proposals, in the light of the Prime Minister's declaration and stated that the modifications they suggested were intended to ensure that the reserved powers were so framed and exercised as not "to prejudice the advance of India to full responsibility and to secure that the period of transition was not indefinitely extended." The Delegation point out that unless the new consitution brings the realisation of a Government fully responsible to the Legislature within sight and its provisions are so framed as to render possible further constitutional progress by the action of the Indian Legislatures, political activity outside the Legislatures will continue to absorb important sections of the politically-minded classes in India.

British Indian Memorandum

Sir Tej Bahadur Sapru's Memorandum covers almost the same ground, though he deals with the problems more comprehensively and in a more thorough and out-spoken manner. Mr. M. R. Jayakar, Mr. N. M. Joshi and the late Mr. A. R. Rangaswami Iyengar generally associated themselves with the views expressed in Sir Tej Bahadur Sapru's Memorandum. To this is appended a very ably and lucidly written note on commercial discrimination by Mr. M. R. Jayakar. Sir Tej Bahadur Sapru declares that no Constitution which fails to satisfy certain essentials will meet with the needs of the situation in India, and rally round a sufficient body of men willing

Sapru Memorandum

to work in the spirit in which it should be worked. These essentials are :

(1) Responsibility at the Centre, with such safeguards as in the interests of India may be necessary for the period of transition, to be established, soon after the passing of the Act, without prolonging the transitory provisions contemplated by paragraph 202 of the White Paper.

(2) Provincial Autonomy with necessary safeguards for the period of transition.

(3) The reserved subjects, viz. ; the Army, Foreign Affairs, and also Ecclesiastical Affairs, to be under the control of the Governor-General, only for the period of transition which should not be long or indefinite.

(4) A definite policy to be adopted and acted upon in respect of the Reserved Departments so as to facilitate their transfer to the control of the Indian Legislature and the Government within the shortest possible distance of time, compatibly with the safety of the country and the efficiency of administration in those departments.

(5) The constitutional position of India within the British Commonwealth of Nations to be definitely declared in the Statute.

Modifications recommended by J. P. C. Report

The Joint Committee was constituted on the 11th April, 1933 and its Report was issued on November 22, 1934. Though the Report of the Committee was based mainly on the proposals contained in the White Paper, they recommended material changes in important matters.

Indirect election to Federal Legislature

Among the modifications of the White Paper scheme proposed by the Joint Parliamentary Committee those relating to the Federal Legislature were of a sweeping character. In the case of the Council of State it was recommended that members from British India should be elected by the Provincial Second Chambers where these existed and in Provinces with uni-cameral Legislatures by electoral colleges chosen by electorates corresponding broadly to those for the

Second Chambers in the bi-cameral Provinces. The members from the States were to be appointed by the Rulers of such states, and the Upper Chamber was to be indissoluble and one-third of its members were to retire every three years.

In the case of the Federal Assembly, the Committee recommended that its British Indian members should be returned by a system of indirect election by members of Provincial Legislative Assemblies, the representatives from the States being appointed by the Princes as in the case of the Council of State. The representation of Indian Christians, Anglo-Indians and Europeans was, however, to be secured by election through electoral colleges consisting of members of their respective communities in all the Provincial Legislative Assemblies, other than those returned to special interest seats, for whom provision was made in the White Paper.

Provincial Second Chambers

With reference to Provincial Second Chambers also the Committee suggested important changes. These were to be indissoluble, the members being appointed for a period of nine years, one-third of whom were to retire every three years. The Committee also recommended that Second Chambers were to be set up in Bombay and Madras as well as in Bengal, Bihar, and the United Provinces. It was further recommended that the power to abolish Second Chambers was to be vested in the British Parliament instead of in the Indian Legislature as proposed in the White Paper.

Additional Special Powers

The Joint Parliamentary Committee recommended that no modifications of the existing Police Acts or of the more important rules made under these Acts, affecting the organisation or discipline of the police, should be made without the previous consent of the Governor, given in his discretion. The Committee also recommended that the Constitution Act should specifically provide that all Governors who might at any time be called upon to deal with the activities, overt or secret, of persons committing, or conspiring to commit, crimes of violence intended to overthrow the Government, be directed in the Instrument of Instructions to exercise from the outset certain additional special powers.

Instrument of Instructions

Further, the original Instruments of Instructions to Governors and any proposals for their modifica-

tion would have to be laid before Parliament and its assent secured before they are issued. It was also recommended that the Constitution Act should lay down that the rules to be made by the Governor regulating the disposal of Government business, shall contain a provision to the effect that Ministers or Secretaries to Government are to submit to the Governor all information regarding any matter under consideration in their departments involving, or likely to involve, any of his special responsibilities.

Commercial Discrimination

Among other changes recommended by the Joint Parliamentary Committee those relating to commercial and other forms of discrimination deserve notice. The Committee recommended that to the special responsibilities of the Governor-General enumerated in the White Paper, should be added a further special responsibility defined in some such terms as follows: "The prevention of measures, legislative or administrative, which would subject British goods imported into India from the United Kingdom, to discriminatory or penal treatment." The Committee, in addition, recommended that the Governor-General's Instrument of Instructions should give him full and clear guidance in the matter. "It should be made clear," they added, "that the imposition of this special responsibility upon the Governor-General is not intended to affect the competence of his Government and of the Indian Legislature to develop their own fiscal and economic policy, that they will possess complete freedom to negotiate agreements with the United Kingdom and other countries for the securing of mutual tariff concession ; and that it will be his duty to intervene in tariff policy or in the negotiation or variation of tariff agreement only if, in his opinion, the intention of the policy contemplated is to subject trade between the United Kingdom and India to restrictions concerned, not in the economic interests of India but with the object of injuring the interests of the United Kingdom." It should further be made clear, the Committee urged, that the "discriminatory or penal treatment" covered by this special responsibility included both direct discrimination, whether by means of differential tariff rates or by means of differential restrictions on imports, and indirect discrimination by means of differential treatment of various

types of products. The Committee also laid down that the Governor-General's special responsibility could be used to prevent the imposition of prohibitory tariffs or restrictions, if he were satisfied that such measures were proposed with the intention already described.

Other financial reservations

Regarding the Reserve Bank Act of 1934, and the Report of the Committee appointed by the Secretary of State in June, 1933, on the Future Administration of Indian Railways, the Joint Committee proposed several modifications with a view to retaining greater powers in the hands of the Governor-General, in his discretion.

No Supreme Court

In regard to the proposal for a Supreme Court to hear appeals from Provincial High Courts, the Committee argued that such a Court 'would in effect take the place of the Privy Council', and in order that there might not be any 'undesirable and undignified disputes' between the Federal Court and such a Court of Appeal, they recommended that the Federal Legislature might be empowered to legislate for an extension of the jurisdiction of the Federal Court. But the Committee definitely set their face against establishing any Court of Criminal Appeal. They also make detailed recommendations regarding the subordinate judiciary.

Orders in Council

The White Paper had pointed out that there were certain matters which could scarcely be determined until the Constitution Act was on the Statute Book. There were besides other matters which if they were set out in the Act would add greatly to its length and complexity. In such matters the White Paper proposed that the procedure of Order in Council should be used. The Joint Parliamentary Committee thought that in many matters belonging to this category the British Parliament should have a voice. They accordingly proposed that a provision should be included in the Constitution Act requiring every Order in Council relating to them to be laid in draft before both Houses of Parliament for approval by affirmative resolution. A procedure of this kind, the Committee thought, would enable Parliament to retain effective control over such matters.

Some typical instances, in which the Joint Parliamentary Committee introduced important modifications

in the proposals of the White Paper, have only been mentioned. There are many other matters regarding which the Committee proposed detailed modifications. These have been duly incorporated in the Government of India Act (1935). The trend of these recommendations is in the direction of extending executive and Imperial control.*

On the publication of the Report of the Joint Parliamentary Committee, the following motion was adopted by both Houses of Parliament :

J. P. C. Report approved by Parliament

"Moved to resolve, that this House accepts the recommendations of the Joint Select Committee on Indian Constitutional Reform as the basis for the revision of the Indian Constitution and considers it expedient that a Bill should be introduced on the general lines of the Report."†

* An American writer has made the following interesting comment on the new Constitution :—

"In this scheme, the Government was proposing a compromise plan which essentially represented the moderate conservative views of the National Government. Socialists and other supporters of the Labour party, however, were dissatisfied with the proposal, for they had come to the view that the continued dependence of India on England was a hindrance to the development of completely democratic government in England itself, and that the economic exploitation of India by the British was not unrelated to the exploitation of labour at home. On the other hand, an increasing weight of English conservative opinion was coming to feel that to give even this much autonomy to India was really to relinquish India altogether, and that a Britain without its Indian empire would no longer be the Britain of the glorious past. Since a free India would be an even more successful economic competitor of Britain than it is at present, ardent 'tariff reformers' lent their strength to the 'die-hard' cause on India, as Sir Henry Page-Croft's motion in Parliament on February 22, 1933, indicated". —*Democratic Governments in Europe* : Buell, Chase & Valeur (1935).

† In the House of Lords, after Viscount Halifax had spoken on the motion, the Marquess of Salisbury moved the following amendment : "To leave out all the words after 'that' and insert

VII

The Government of India Bill was framed in strict consonance with the Joint Committee's recommendations and read a first time on the 5th February, 1935. In moving the second reading of the Bill by the Commons, on the 6th February, Sir Samuel Hoare spoke at length in defence of the Government proposals. On behalf of the opposition Mr. C. R. Attlee moved "in the opinion of this House, no legislation for the better government of India will be satisfactory which does not secure the goodwill and co-operation of the Indian people by recognising explicitly India's right to Dominion Status and by providing within it the means of its attainment and which does not by its provisions as to franchise and representation secure to the workers and peasants of India the possibility of achieving by constitutional means their social and economic emancipation." He observed: "In fact, the one thing which seems to be left out of the Bill is the Indian people. In every Clause throughout the Bill we find a mistrust of the Indian people. The legislature is to be over-loaded with Conservative interests, landlords, commerce and the like. Second

The Bill in Commons

'this House is unwilling to pronounce in advance an acceptance of far-reaching recommendations on Indian Constitutional Reform until it has had the opportunity of considering and approving the particular recommendations of the Joint Select Committee to be adopted by the Government and proposed in the concrete form of the provisions of a Bill". The amendment, which was negatived, represented the attitude of the Conservative critics of the Bill. (*Debates*, House of Lords, 12 December, 1934).

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chambers are to be set up. The conclusion to which one comes on looking at the Bill is that the definite decision has been that India is to be ruled by the wealthy and the privileged. The curious thing is that even those people are not trusted. The Second Chambers are to represent Conservative interests, landlords, wealthy people and the like, but even they cannot be trusted with finance. Right through the Bill there is mistrust and inequality. We have heard of the idea that there is to be some kind of partnership in India. . . . It is a one-sided partnership." Mr. Attlee's amendment was, of course, rejected.

A section of Conservatives led by Mr. Winston Churchill, Brigadier-General Sir Henry Page-Croft, Sir Alfred Knox, Sir Reginald Craddock, and the Duchess of Atholl also opposed the Bill in the Commons, and urged for a grant of powers to the Provinces only.

On the basis of an agreement regarding the proceedings in the Committee stage,* the Bill was discussed in detail for two months. Important changes in the drafting of the Bill were incorporated to meet the objections made by the Princes at a meeting in Bombay, acting on the advice of their constitutional lawyers and experts. The Churchill group in raising the matter in the Commons tried to suggest that the whole structure of the Bill, based as it was on the establishment of a Federation, was jeopardised by the Princes' criticism. Charges of intimidation, bargaining and coercion to make the Princes agree to the scheme were also made, immediately to be repudiated. A number of new clauses and changes were incorporated as a result of the Committee's detailed discussions.†

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* *Debates,* House of Commons, 18th February, 1935.

† The new clauses include one providing that persons are not to be disqualified by sex for holding certain offices, though no guarantee is offered in the sphere of civil professions or vocations; and another regarding the secretarial staff of the

Finally, there was the motion for the Third Reading made on the 4th June, when the Secretary of State mentioned that inspite of criticisms, with one single exception, the Government's majorities had never sunk below four to one.

Mr. Morgan Jones moved an amendment on this occasion that: "this House declines to assent to the Third Reading of a Bill which, in its establishment of a new constitution for India, does not contain the means for the realisation of Dominion status, imposes undue restrictions on the exercise of self-government, fails to make adequate provision for the enfranchisement and representation of the workers, both men and women, and entrenches in the legislatures the forces of wealth, privilege, and reaction".

The Bill in the Lords

The Bill was placed before the Lords on the 6th June, 1935. The Marquess of Zetland who had replaced Sir Samuel Hoare in the India Office piloted the Bill in the Lords and agreed to a number of changes, the most notable being the reservation of six seats in the Council of State for women, and the substitution of direct for indirect election to the Federal Upper Chamber.* Important contributions to the

Governor-General and Governors, appointed by the respective executive heads of the Federation or Provinces, whose salaries etc., shall be non-votable.

* Apart from important drafting amendments, the Lords urged that the Advocate General for the Federation could be recruited from members of the Bar of a Federated State; that the Advocate General in the Federation or a Province shall have the right to address the Legislature to press the point of view of the Governor-General or Governor as the case might be; that the Proclamations to be issued by the Governor-General in cases of breakdown were to extend not for six but for 12 months without Parliamentary approval, and that such proclamation may continue for three years and not for 18 months only at a time; that the Anglo-Indian Community shall

debates were made by Viscount Halifax (formerly Governor-General of India), Marquess of Linlithgow, Marquess of Lothian, Lord Snell, Marquess of Salisbury, Marquess of Reading, Lord Strabolgi, Lord Rankeillour, etc. On the 24th July the Bill was passed with changes and returned to the Commons.

The Labour Party and certain prominent Liberals, in both the Houses made strenuous attempts, inspite of technical difficulties, to incorporate a declaration regarding Dominion Status, and the opposition to the system of Communal electorates was voiced notably by Col. Wedgwood and Lord Strabolgi, Lord Olivier, and even by Lord Salisbury.

Bill as amended passed

On the 30th July the House of Commons discussed and agreed to most of the Lords' amendments and after the Lords had agreed to the Commons' amendments to the Lords' amendments, the Bill received the Royal assent on August 2, 1935.* In discussing the 'longest Act in the history of Parliament', 61 Parliamentary days were occupied. The original Act, consisting of 478 clauses and 16 schedules has been split up into a Government of India Act of 321 Sections and 10 schedules and a Government of Burma Act with the rest, by the passing of the Government of India (Reprinting) Act, 1935, passed on the 20th December, 1935.

Reprinting Act

receive special consideration in the railways, and post and telegraph department; and that the advisers to the Secretary of State shall enjoy the power of veto over all appointments.

* It was on another August 2, in 1858, that the Royal assent was given to the Bill providing for the assumption of the Government of India directly by the Crown.

CHAPTER TWO

FEATURES OF THE NEW CONSTITUTION

1. All-India Federation

The Government of India as at present constituted exercise jurisdiction over British India (including Burma) and the Indian States. Although British India is divided into Provinces, which are governed as units of administration, the supreme control over the entire British territory in India is exercised through the Governor-General of India in Council. "The more important States enjoy within their own territories all the principal attributes of sovereignty but their external relations are in the hands of the Paramount Power. The sovereignty of others is of a more restricted kind, and, over others again, the Paramount Power exercises in varying degrees an administrative control."* The Paramount Power at present exercises authority in respect of the States also through the Governor-General of India in Council.

The present constitution of the Government of India is of the unitary type. In such a system of government the central authority is supreme in all matters over the entire territory, and the smaller areas such as the Provinces into which British India is divided, are entirely the

* *Report* of the Joint Committee on Indian Constitutional Reform, Vol. I., Part I.

creations of the Central Government, and all their powers are derived from that authority. "Notwithstanding the measure of devolution in the Provincial authorities which was the outcome of the Act of 1919, the Government of India is and remains in essence a unitary and centralised Government, with the Governor-General in Council as the keystone of the whole constitutional edifice; and it is through the Governor-General in Council that the Secretary of State and ultimately Parliament discharge their responsibilities for peace, order, and good government of India".*

Character of Indian Federation

The Government of India Act (1935) provides for the union of British Indian Provinces (from which Burma is to be separated) and the States in a Federation. In a federal form of government both the central authority and the smaller units derive their power from a constitution. An important feature of a federal constitution is that the respective spheres of activity of the Central Government and the smaller units are, as far as possible, clearly laid down, so that neither may be able to trench upon the jurisdiction of the other. Another essential feature of a federation is the creation of an independent and impartial judiciary for the settlement of disputes that may arise between the units of the Federation or between the Central authority and the units.

The Indian Federation as contemplated in the Government of India Act (1935) seeks to fulfil the three conditions as enumerated in the preceding paragraph. Yet it cannot

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* *Report*, Vol. I, Part I.

be denied that it is dissimilar to any federation that may be found to exist anywhere else in the world. The units of a genuine federation must all have the same, or a uniform, form of government. The proposed Indian Federation, will have as units, the British Indian Provinces, which will be autonomous, along with the States, which are governed autocratically and are more or less under the personal rule of their Princes.

Description by White Paper

The White Paper recognised that the Federation proposed for India was somewhat 'unique' in character. It pointed out that Federation elsewhere usually resulted from a pact entered into by a number of political units, each possessed of sovereignty or at least of autonomy, and each agreeing to surrender to the new central organism which their pact created an indentical range of powers and jurisdiction, to be exercised by it on their behalf to the same extent for each one of them individually and for the Federation as a whole. "India, however, has", the White Paper added, "little in common with historical precedents of this kind. In the first place, British India is a unitary State, the administrative control of which is by law centred in the Secretary of State. It follows that the provinces have no original or independent powers or authority to surrender. The States, on the other hand, though they are under the suzerainty of the King Emperor form no part of His Majesty's dominions. Since Parliament cannot legislate directly for their territories, the range of authority to be conferred upon the Federal Government and Legislature in relation to the States must be determined by agreement with their Rulers; and the States have made it plain that they are not prepared to transfer to a Federal Government the same range of authority in their territories as it is expedient and possible to confer upon it in relation to the Provinces. The position will, therefore, necessarily be that in the Indian Federation the range of powers to be exercised by the Federal Government and Legislature will differ in relation to the two classes of units which compose it."

Singularities of Federal Scheme

The Rulers made it clear, as the Report of the Joint Committee stated, that while they were willing to consider federation with the Provinces of British India on certain terms, they could not agree to the exercise by a Federal Government in relation to them of a range of powers identical in all respects with those which that Government would exercise in relation to the Provinces. And the Committee admitted that this was an anomaly : "A Federation composed of disparate constituent units in which the powers and authority of the Central Government will differ as between one constituent unit and another". This anomaly gives rise to several other exceptional conditions. While, for instance, the representatives of the British Indian Provinces on the Federal Legislature will be returned by elective methods, those of the States will be nominated by their Rulers.*

Conference of Princes and Ministers

* As soon as the Government of India Bill was published the Princes and their Ministers on receipt of the opinions of eminent lawyers, met at a Conference in Bombay, on February 25, 1935. His Highness the Maharaja of Patiala, Chancellor of the Chamber of Princes, as reported in the London *Morning Post*, characterised the Bill as "the attempt to write the final chapter of that tragic history which began in 1930 with the hope of a glorious dawn, but threatens to end to-day in a thunderous storm". "The Federation", he continued, "that is sought to be imposed on us and which is being rushed without even awaiting our criticism has nothing in common, except in name, to the scheme which in its general outline we accepted at the First Round Table Conference". The meeting expressed the opinion that "in their present form and without satisfactory modification and alteration on fundamental points the Bill and Instrument of Accession cannot be regarded as acceptable to Indian States". The late Jam Saheb's prophecy that the States would disappear within two decades of the establishment of Federation, came to be freely

Moreover, as Sir Samuel Hoare, Secretary of State for India, in moving the second reading of the Government of India Bill, observed, Federal Government was bound to be more complicated than a unitary Government. He added that in the case of an All-India Federation there was the additional complication due to the fact that the units were as different as the Indian States were from the British India Provinces. These com-

Sir Samuel Hoare on its complications and reactions

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quoted in certain quarters. The Resolution passed by this meeting, the Report of the Committee of Ministers presided over by Sir Akbar Hydari, and a letter from the Maharajas of Patiala and Bikaner and the Nawab of Bhopal and the decisions of the Government thereon, formed the subject matter of a White Paper which was presented to Parliament on March 18, 1935. (Command Paper, 4903.)

The White Paper stated that His Majesty's Government were prepared to give careful consideration to any views expressed by Rulers regarding the form of the Government of India Bill and to recommend to Parliament any modifications which would be consistent with the preservation of its essential provisions, but it was not the intention of His Majesty's Government at that stage to discuss new matters which had no bearing on the form of the Bill.

White Paper on the Princes' objections

His Majesty's Government declared that the Constitution must be accepted as a whole, but recognized that the circumstances of different States might justify some variation in the powers exercised in relation to these States by a particular Federal organ. It was pointed out that provision had accordingly been made enabling a Ruler, in his Instrument of Accession, to exclude the power of the Federal Legislature to make laws for his State in respect of some of the items in the Federal legislative list and to attach conditions and limitation to his acceptance of others. His Majesty's Government further expressed their regret that the exigencies of Parliamentary business did not permit of any considerable delay between the publication of the Bill and its consideration by Parliament.

Their Highnesses put forward a request that the various claims advanced from time to time by the Princes in relation to the exercise of Paramountcy should be settled as a condition precedent to the accession of a State to the Federation. The greater part of the field of Paramountcy, observed the Secretary

Questions relating to Paramountcy

plications reacted upon almost every clause in the Federal chapter. They reacted, for instance, upon the provisions as to how the Federation was to be formed, for it was obvious that the Provinces, being voluntary agents, could only enter of their own volition. They reacted, again, upon the kind of executive and the kind of legislature that was proposed, each side of the Federation obviously demanding adequate representation both in the Government and in the Federal Legis-

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of State, was untouched by the Bill. He added : "I desire at once to make it plain that, though His Majesty's Government recognized the advantage of further clarifying the practice governing the exercise of Paramountcy, such issues cannot be determined by the consideration whether the States do or do not federate".

Mr. Bhulabhai Desai's advice

Mr. Bhulabhai Desai's advice was sought by the Princes in this connection. As summarised by a contributor to the *Round Table,* Mr. Bhulabhai Desai's advice to the Princes given, as he later explained as legal opinion, which he took pains to divorce from his personal views, was to stand on their rights; to demand that the Instruments of Accession be called treaties; to protest against the use of such words as "usage or sufferance" in any reference to the origin of the authority of the British Crown in regard to the States; to oppose any reference to State subjects in the new Bill soon to become an Act : to object to the Governor-General's having any power to prevent any menace to peace or tranquillity in the States.

This advice was elaborated by Mr. Desai later in an address delivered by him to the Mysore Bar Association. Mr. Desai declared that the position of an Indian State, according to International law, was that of a monarchical State, where the ruler was a despot in the Greek sense, the source of all power and authority, whose will was law. In this view only the Prince could represent the State as a unit of the Federation in a strictly legal sense.

Important amendments

The most important of the several amendments introduced in the Bill to meet the Princes' objections relate to Section 6 (1)a, where instead of the Ruler of a State declaring that he *accepts this Act as applicable to this State and to his subjects,* he is now required to declare that 'he accedes to the Federation as established under this Act'; and to Section 128 by which the power of the Governor-General to issue directions to the

lature. They reacted, also, upon the relations between the two Federal Chambers, the Princes, from the first, attaching the greatest possible importance to the Chambers having equal powers. They reacted, further, upon the list of Federal subjects, the Princes, again, insisting that, apart from the functions of Government, which they surrendered to the Federation, there should be no interference in their internal sovereignty.*

It will thus be seen that the scheme of Federation formulated in the Government of India Act, which provides for unequal and differential treatment of the different units of the federation, runs counter to the basic principles of a true federal system of government.†

Federation as defined by Joint Committee

It is notable that the definition of a federation as supplied by the Joint Parliamentary Committee can hardly find any authoritative support either from recognised writers on political science or responsible statesmen. The Committee in their Report repudiate the identification of federation with the establishment of 'responsibility at the Centre', and describe a federation as "simply the method by which a number of governments, autonomous in their own spheres are combined in a single State". This specification is immediately followed by the further

ruler in order to secure the fulfilment of obligations, is qualified by the right of either the Federation or the Ruler to refer to the Federal Court on the subject of jurisdiction. The people of the States are, under the arrangement, absolutely disenfranchised. (Reference may be made to a pamphlet, *Mr. Bhulabhai J. Desai and the People of the States*, published by the General Secretaries, The Indian States' People's Conference, Bombay, for some of the issues involved. It also contains a tabular statement of the relevant amendments to the Bill, as a result of the representation by the Princes).

* *Debates*, House of Commons, 6 February, 1935.

† See also Chapter Six on the "Distribution of Legislative Powers".

A True Federation

elucidation : "A federal legislature capable of performing this function need not necessarily control the federal executive through responsible ministers chosen from among its members". On the other hand, an authoritative definition of a true federation is that given by Professor Newton, who describes a federal state as 'a perpetual union of several sovereign states, based first upon a treaty between those states, or upon some historical status common to them all, and secondly, upon a federal constitution accepted by their citizens. The central government acts not only upon the associated states but also directly upon their citizens. Both the internal and external sovereignty of the states is impaired and the federal union in most cases alone enters into international relations'. The Joint Committee's idea of a federation, based on an irresponsible federal executive has never been heard of before, and on such condition no state, unless coerced, would agree to federate.

"The Indian Federal system", writes Mr. H. B. Lees-Smith,* "will be of a kind hitherto unknown, for there will be one set of Federal powers for the Provinces and another for each of the Indian native States. The government of one part of the federation will be based upon parliamentary principles, that of the other upon Oriental absolutism.

Out-of-the-way character of Indian Federation

"The Princes also made it a condition that, like the Moslems, they should have representation in the Federal Legislature greater than that to which the population of their States entitles them. Although the native States account for only 23 per cent. of the population of India, they will have 33 per cent. of the voting power in the lower and 40 per cent. in the

* *Current History*, October, 1935. Mr. Lees-Smith was one of the British Government representatives to the first session of the Round Table Conference.

upper house of the Federation. Here, then, is another important element in the Federal Legislature that will be impervious to movements of public opinion."

Prof. Keith on its anomalies

In the opinion of Prof. A. B. Keith, the distinguished authority on Dominion Constitutions and practice, the Government has adopted a policy which endeavours to blend two irreconcilable elements. "It desires", he writes, "to satisfy the people of India that it is conceding responsible government and the Conservatives of England that it is imposing such checks as will render responsible government innocuous, by depriving it of the characteristics of true responsibility. I am satisfied that the system of construction of the Federation under which the nominees of autocratic rulers are to have a powerful voice in both Houses of the Federation, in order to counteract Indian democracy is quite indefensible. Whether in practice it works out as the Government and the Princes hope, may be doubtful, but the whole project seems to me indefensible. I should have proposed Federation only for units which were themselves under responsible government and have admitted the Princes only on condition that they gave their States, constitutions leading up to responsible Government, and that their representatives in both Houses of the central Legislature were elected by the people of the States".*

A.B. Keith

2. Dyarchy at the Centre

When the Princes at the first session of the Indian Round Table Conference announced their readiness to agree to the project of an Indian

* In the course of a letter published in the *Servant of India*.

Central Responsibility and Federation

Federation, they made it plain that responsibility at the centre must be a condition precedent to such a policy. In this, Rulers of Indian States and their representatives were in complete agreement with the views expressed by British Indian politicians. The great contribution of the first session of the Indian Round Table Conference in 1930, says Sir Tej Bahadur Sapru, was the evolution of the idea of an All-India Federation consisting of the Provinces of British India and Indian States. But, he added, this was not as an ideal to be attained in a dim and distant future but as the basis of a constitution providing central responsibility to be set up as an immediate result of Parliamentary legislation.*

The dramatic declaration of the Princes in favour of joining an All-India federation at the opening of the first session of the Round Table Conference, has been described as an act of "unexpected farsightedness". For, it is said, "they had realized that India was on the march to self-government and that it would be wise to come in at the beginning while they could make their own terms." As is now well-known, "responsibility to the central legislature emerged as a consequence of the Princes' action". "The Conservative Party (who at that time were in a minority in the House of Commons, though they had the decisive voice through their majority in the Lords) saw all the difference in the world between an Indian central Government controlled by Congress politicians like Gandhi and one of which a substantial section was formed by Indian princes, represented by their officials, old and seasoned administrators not unlike the British type. To a body largely composed of such men the conservatives were willing to give responsible power. The three hours between breakfast and luncheon on November 18, 1930,

* Memorandum by Sir Tej Bahadur Sapru, *Records,* Vol. III.

in the Queen Anne's Room at St. James Palace during which this change took place saw one of the great decisive events in the history of India; by their part in it the princes undoubtedly consolidated their position in the government of the country."*

The Joint Parliamentary Committee preface their recommendations with reference to the Central sphere with a re-statement of the declaration of the Princes that "they are willing now to enter an All-India Federation, but only if the Federal Government is a responsible and not an irresponsible Government", and that "they should be assured of a real voice in the determination of its policy." The Committee's scheme which has practically been incorporated in the Government of India Act (1935), with slight modifications, amounts to the introduction of a sort of dyarchy in the Federal Government. Such a system, however, has failed in the provinces of British India and has been considered to be of doubtful value.

The Federal Executive

The executive power and authority of the Federation shall vest in the Governor-General as the representative of the King. This power and authority will be derived from the Act itself, but the Governor-General will also exercise such prerogative powers of the Crown (not being powers inconsistent with the Act) as His Majesty may be pleased to delegate to him. The former is to include the supreme command of the military, naval and air forces in India, but it is proposed that power should be reserved to His Majesty to appoint a Commander-in-Chief to exercise in

* H. B. Lees-Smith: *Self-rule for India, (Current History,* October, 1935).

Reserved Subjects

relation to those forces such powers and functions as may be assigned to him. In relation to a State which is a member of the Federation, the executive authority will only extend to such matters as the Ruler has accepted as falling within the federal sphere by his Instrument of Accession. It is then proposed that there will be a Council of Ministers, chosen and summoned by the Governor-General and holding office during his pleasure, to aid and advise him in the exercise of the powers conferred on him by the Act other than his powers relating to (1) defence, external affairs and ecclesiastical affairs, (2) the administration of British Baluchistan and (3) matters left by the Act to the Governor-General's discretion. In respect of certain specified matters the Governor-General is declared to have a "special responsibility"; and his Instrument of Instructions will direct him to be guided by the advice of his Ministers in the sphere in which they have the constitutional right to tender it, unless in his opinion one of his special responsibilities is involved. In the latter case, he will be at liberty to act in such manner as he judges requisite for the fulfilment of that special responsibility, even though this may be contrary to the advice which his Ministers have tendered.*

The Governor-General shall himself direct and control the administration of the Departments of Defence, External Affairs and Ecclesiastical Affairs, and the Governor-General's responsibility with respect to them will be to the Secretary of State and thus ultimately to Parliament. It is proposed that he should

* Vide, *Report* of the Joint Parliamentary Committee, pp. 92-93.

be assisted by not more than three Counsellors who will be appointed by him and whose salaries and conditions of service will be prescribed by Order-in-Council. Each Counsellor will be ex-officio an additional member of both Chambers of the Legislature for all purposes, though without the right to vote ; and there will be no restriction on his right to take part in any of the debates in the Legislature, if he desires to do so. The Advocate-General of the Federation will also have rights similar to those possessed by the Counsellors in regard to the Federal Legislature.

Counsellors and Advocate-General of India

Qualifications, restrictions and safeguards

The dyarchic form of government in the Centre as described above, is qualified by numerous restrictions and 'safeguards', along with the incorporation in the Constitution of methods and conditions, explained elsewhere, that militate against the basic principles of any recognised system of popular government. The special powers and responsibility with which the Governor-General, who is the corner-stone of the federal constitutional structure, is invested, along with the strengthening of the system of Parliamentary control, and the introduction of the very novel principle of 'executive independence' enunciated by the Joint Parliamentary Committee and given effect to by the framers of the Government of India Act, render the restricted measure of responsibility, designed to be introduced in a limited sphere, almost wholly ineffective. Further, the Prime Minister's scheme of communal electorates, as modified by the Poona Pact, which extends and elaborates communal electorates as a distinctive and continuing feature of the constitution, cannot but hinder the development of the democratic principle and retard the realisation of responsibility.

Indian Legislative Assembly on Central Responsibility

On the eve of the discussion in the House of Commons of the Government of India Bill, the Indian Legislative Assembly debated for three days on the Joint Parliamentary Committee's Report, on a motion by the Leader of the House to consider it. The House adopted an amendment by Mr. Jinnah demanding modifications of the scheme of provincial autonomy and proposing that the scheme of All-India Federation be dropped in favour of new proposals giving complete responsible government at the centre. Quoting from the Joint Parliamentary Committee's Report Mr. Jinnah showed that provincial autonomy would come into being immediately and that Federation was conditional upon the fulfilment of certain conditions, and unless this materialized, His Majesty's Government would take steps to review the whole position. He characterized the federal scheme as "thoroughly rotten, fundamentally bad and totally unacceptable . . . . Between the conditions laid down by the Princes and the iron wall of safeguards I am nowhere . . . . The Constitution you are proposing for the Centre is worse than the present constitution. This constitution means absolute sacrifice of all that British India stands for and has worked for and developed during the last 50 years in the matter of a representative form of government. I ask of the Princes, if this is the responsibility which they have laid down for the Centre and on which they are prepared to come into the federation. There are 98 per cent. of safeguards and 2 per cent. of responsibility. . . . This idea of a Federation is a design to withhold responsibility from the Centre".*

Governor General acting 'in his discretion'

Further, a very important change has been introduced in the new Constitution. This is the conferment of important powers on the Governor-General, acting in his discretion, which, under the existing system, are exercised by the Governor-General in Council. By this arrangement, the Indian Legislature and future Ministers are deprived of considerable power and

* Indian Legislative Assembly, *Debates*, February 5, 1935.

influence in the determination of policy in matters in which the people of the country are vitally interested. This detracts entirely from the principle of responsible government as the Governor-General will have less opportunity of ascertaining, and of being guided by Indian public opinion, and the control and influence to which he will be amenable will be mainly those of the Secretary of State.

Contact with Indian States

The relation of the Government of India with the Indian States, outside the circle assigned by individual Rulers to the Federation may be mentioned as an important sphere in which the new policy is to be applied. According to the established practice, the consideration of matters affecting the States is included among the legitimate functions of the Governor-General in Council. This arrangement will be replaced by a system according to which the Governor-General, as His Majesty's Representative, will, when the new Constitution comes into effect, exercise the functions of the Crown in its relations with Indian States other than those assigned by the Rulers to the Federation. In view of the fact that it is through His Majesty's Representative that the compliance of the States to Federal Legislation, even within the assigned sphere, is to be secured, it is not difficult to imagine, how very slender is likely to be the power of the Federal Government to influence the States.

The provisions of the new Constitution regarding the Reserve Bank of India and the Federal Railway Authority afford further examples of such policy. With reference to the functions of the Reserve Bank of India, it is laid down that the Governor-General shall, in his discretion exercise certain important

Reserve Bank and Railway Authority

powers, and it is definitely provided that no Bill or amendment, which affects the constitution or functions of the Bank, shall be introduced or moved in the Legislature without the previous sanction of the Governor-General, in his discretion.* Regarding the Federal Railway Authority it is provided that the provisions of

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* The Memorandum of the British Indian Delegation states: "These provisions and the establishment of a Reserve Bank, independent of the Federal Executive would in effect mean that the Finance Minister would not, in respect of currency and exchange policy, be responsible to the Indian Legislature. We draw the attention of the Committee to a statement made by the Secretary of State on December 24th, 1932, at a meeting of the Round Table Conference, that 'the British Government have fully accepted the fact that there can be no effective transfer of responsibility unless there is an effective transfer of financial responsibility'. We do not see how Finance can be regarded as a transferred subject, unless and until the Finance Minister is also responsible for the currency and exchange policy of the country and is in a position to determine that policy solely in the interests of India. Indeed, as we have shown in the second part of the Memorandum, so long as the currency and exchange policy of the country is reserved it would be difficult for the Ministers in charge of Industry and Agriculture to accept full responsibility for the development of these Departments. It is unnecessary, especially at present, to emphasize the fact that the prosperity of industry and agriculture is very closely connected with the level of commodity prices, which of course, is dependent on the currency and exchange policy of the country". Further: "We wish, however, to emphasise here that it is of the utmost importance that the principal officers of the Bank, namely, the Governor and Deputy Governor, should not be under the influence either of Whitehall or of the City. In the course of the discussion which some of the Delegates to the Round Table Conference had last year with representatives of the City, very great emphasis was laid on the importance of establishing a Bank which had the confidence of the Indian public. Nothing would shake public confidence in India more than the suspicion that the Governor and the Deputy Governor were acting under the influence of Whitehall or the City". (*Records*, Vol. III, p. 208-209).

the new Constitution relating to the special responsibility of the Governor-General, and to his duty as regards certain matters to exercise his functions in his discretion or to exercise his individual judgment, shall apply as regards matters entrusted to that Authority. The Governor-General is empowered to deal with such matters as if the functions of the Federal Railway Authority are in these matters the functions of ministers. The Governor-General may, accordingly, issue to the Federal Railway Authority such directions as he may deem necessary as regards any matter which appears to him to involve any of his special responsibilities, or as regards which he is by or under the Act required to act in his discretion or to exercise his individual judgment, and the Authority shall give effect to any directions so issued to them. It will thus be seen that in the new Constitution, the Legislature and the Ministers will have much less concern with the functions and policy of the Reserve Bank of India and the Federal Railway Authority than the power and influence exercised over such matters in the existing constitution by the Legislature and the members of the Governor-General's Executive Council.*

Employment of Indian troops beyond Indian frontiers

The revised provisions relating to Defence illustrate the new policy of eliminating in certain cases the control of the British Parliament and of concentrating power in the hands of the Governor-General, where such power and influence are at present exercised by the Governor-General in Council. When Indian troops are ordered to commence hostilities beyond the Indian frontiers, the British

* Sir Tej Bahadur Sapru writes in his Memorandum: "I think it to be of the essence of responsible government that Railways should be transferred to the Federal Government and that the Federal Government and the Federal Legislature should be empowered to pass such legislation as it might be advised to pass, setting up a statutory Railway Board with clearly defined powers and functions". (*Records*, Vol. III).

Sphere of defence in which control of British Parliament is eliminated

Parliament has to be informed and its consent to the expenditure to be incurred for such military operations secured. In the new Act, however, the function of Parliament, in this matter, is dropped. Prof. A. B. Keith refers to this as emphasising "the dislike of the executive government for Parliamentary control of any direct kind". As the position with regard to the employment of Indian troops outside India can hardly be said to be satisfactory and as the functions of the Governor-General with respect to defence shall be exercised by him in his discretion, he thinks that under this power "the Governor-General would have unfettered authority to lend a contingent if he thought the occasion involved the defence of India in the widest sense of that term, and if he believed that the troops could be spared".*

Prof. A. B. Keith's observations

* *The Indian Review* (Dec. 1935). Prof. A. B. Keith further says: "But he has in addition the power to lend Indian personnel for service outside India even when the defence of India in the broadest sense is not involved. In the former case the powers of the Governor-General as to expenditure are absolute. Whatever sum he thinks proper can under Section 33 of the Act be charged on the revenues of India, and accordingly Indian forces can be used outside India at the cost of India without any necessity of informing Parliament, still less of obtaining the consent of the two Houses, or even of the House of Commons. Indeed, in such a case the Joint Select Committee in its Report does not even require that the Governor-General should consult his Ministers before deciding on an action; the decision, they hold, falls within the exclusive sphere of his responsibility. His responsibility, however, under the provisions of Section 14 of the Act, is controlled by the directions given to him by the Secretary of State, and it is, therefore, in the power of the British Government without any communication to Parliament to use the revenues of India for external expedi-

3. Provincial Autonomy

A basic feature of the new constitution is the grant of autonomy to the British Indian Provinces. Before the introduction of the Montagu-Chelmsford reforms in 1921, the Provincial Governments were the mere agents of the Government of India, whose decision and policy they were to carry out. This, in other words, means that the Government

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tions and to continue to do so without the necessity of justifying its conduct to both Houses, with the publicity and exposure to criticism which is inevitably involved in carrying through either House a formal resolution.

"In those cases in which the Governor-General felt unable to hold that the defence of India in the broadest sense was involved, it would be requisite under the proposals of the Joint Select Committee that he should consult the Federal Ministry, but that body evidently considers that he would not be bound to accept their advice. The one safeguard lies in the fact that under Section 150 of the Act, no burden shall be imposed on the revenues of the Federation except for the purpose of India. If, therefore, the Governor-General could not bring the matter under defence in its broadest sense, it would rest with the legislature to decide whether or not Indian funds should be used to pay for the troops on the score that their employment, though not ancillary to Indian defence, served the general interests of India and could be defended on that ground as compatible with the terms of section 150. If the legislature would not vote, the British Parliament would clearly have to pay". "But", Prof. Keith adds, "it is difficult to conceive any circumstances in which a Governor-General would be unable to hold with perfect good faith that expenses in respect of the use of Indian troops outside India would be covered by the requirements of Indian defence in the broadest sense of that term. It is in fact obvious that, since Indian defence requires the co-operation in emergency of British forces, it can always be argued that the reciprocal co-operation of Indian forces with the British is an essential factor in the defence of India".

of India then exercised control and supervision over the entire provincial field of government in British India. The present arrangement, of which dyarchy was, perhaps, the most characteristic feature, brought about a change in the system described above by introducing a measure of responsibility of the executive in the transferred sphere, to the people in the Provinces, through their elected representatives in the Provincial Legislature, along with some relaxation of central control. This will now be replaced by a system in which the provincial governments will have autonomy conferred on them and these along with the States will be the units of a federal Government.

Origin of the Idea

The idea of constituting the provinces of British India as autonomous units is not a new one ; it has a long history behind it. When the Government of India was transferred to the British Crown about eighty years ago, John Bright urged on the British Parliament that they would not be able to take a single step towards the improvement of the condition of the people of India unless they changed the whole system of government and gave to each presidency a government with more independent power than was possessed by it then. "What, we want to make", he said, "is to make the governments of the presidencies governments of the people of the presidencies ; not governments of the civil servants of the Crown.......If that were to go on for a century or more, there would be five or six presidencies of India built up into so many compact states ; and if at any future period the sovereignty of England should be withdrawn, we should have so many presidencies built up and firmly compacted together each able to support its own independence and own government, and we should be able to say we had not left the country a prey to that anarchy and discord which I believe to be inevitable if we insist on holding these vast territories

with the idea of building them up into one great empire."*

Hardinge Despatch, 1911

The idea to which the great British orator and statesman gave so eloquent an expression practically lay dormant till Lord Hardinge's Government in their Coronation Durbar Despatch to the Secretary of State for India revived it in a considerably modified form in 1911. The Governor-General in Council had foreseen that "in the course of time, the just demands of Indians for a larger share in the Government of the country will have to be satisfied". "The only solution of the difficulty", they declared, "would appear to be gradually to give the provinces a larger measure of self-government, until at last India would consist of a number of administrations, autonomous in all provincial affairs, with the Government of India above them all, and possessing power to interfere in cases of misgovernment, but ordinarily restricting their functions to matters of Imperial concern".

Montagu-Chelmsford Report, 1918

Too little attention was paid to the importance of translating into action the idea enunciated in the Despatch, until the Montagu-Chelmsford Report on Indian Constitutional Reforms resuscitated it. After discussing the problem at some length in all its bearings the Report stated: "Official control from above is incompatible with popular control from within and the admission of the latter justifies, indeed demands, a corresponding reduction of the former. Parliament, the Secretary of State, and the Government of India must all relax control if the legislative councils in the provinces are to share the responsibility for the administration. Similarly provincial governments must abate their superintendence when popularly constituted subordinate authorities have been entrusted with functions of their own".

The idea of provincial autonomy has thus been associated generally with the responsibility of the executive to an elected legislature. The

* *A Critique of the White Paper,* Part I (The Politics Club, Calcutta).

Joint Parliamentary Committee in their Report, however, define Provincial Autonomy as a scheme "whereby each of the Governors' Provinces will possess an Executive and a Legislature having precisely defined spheres and in that exclusively provincial sphere broadly free from control by the Central Government and Legislature. This we conceive to be the essence of Provincial Autonomy, though no doubt there is room for wide differences of opinion with regard to the manner in which that exclusive authority is to be exercised." Under the proposed system, "the Central Government and Legislature would, generally speaking, cease to possess in the Governors' Provinces any legal power or authority with respect to any matter falling within the exclusive Provincial sphere, though, as we shall explain later, the Governor-General in virtue of his power of supervising the Governors will have authority to secure compliance in certain respects with directions which he may find it necessary to give."*

Autonomy: a natural developement

Of all the proposals for the re-constituted government of India, states the Joint Parliamentary Committee's Report, the principle of Provincial Autonomy has received the greatest measure of support on every side. "The safest hypothesis on which we can proceed, and the one most in accordance with constitutional history", the Report continues, "is that the future government of India will be successful in proportion as it represents, not a new creation substituted for an old one, but the natural evolution of an existing government and the natural extension of its past tendencies". In urging that Provincial autonomy is a natural development, the Committee contend that "far-reaching as is this constitutional change, it is not a break with the past. Every student of Indian problems, whatever his

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* *Report,* Vol. I, Part I, p. 29.

prepossessions, from the Joint Select Committee of 1919 to the Statutory Commission, and from the Statutory Commission onwards, has been driven in the direction of Provincial Autonomy, not by any abstract love of decentralisation, but by the inexorable force of facts. Moreover, the same facts had already set the Government of India moving in the same direction, long before the emergence of the constitutional problem in its present form''.

Three main features of Autonomy

In particular, this gradual course of devolution had, it is stated, produced three important results. "It had tended to remove provincial administration from the immediate purview of His Majesty's Government and, by thus weakening the direct accountability of Indian administrators to Parliament, it had, perhaps rendered inevitable the introduction, in some degree, of local responsible government. At the same time, it had tended to make the Provinces the centres of the development of social services; and it had also tended to transfer to the Provincial Executives the prime responsibility for the preservation of law and order".

From these three changes, the Committee think, the three main features of Provincial Autonomy are directly derived. In the first place, the Report notes: "A sense of responsibility is an attribute of character born of experience . . . . it can only be acquired by making men responsible politically for the effects of their own actions. . . . Hence the recommendation of the Statutory Commission, which we endorse, that the dyarchic system should be abolished, and that provincial Ministers should be made generally responsible over the whole field of Provincial government." Secondly, "in the sphere of social administration, it is evident that a point has been reached where further progress depends upon the assumption by Indians of real responsibility for Indian social conditions". But the "most difficult and the most important" is the third aspect of autonomy relating to "the fundamental functions of government". In the opinion of the Committee, the executive cannot share with the legislature, however answerable it may be to that legislature for the manner of its discharge, the responsibility for the enforcement of law and order, and the maintenance of an upright administration.

This 'principle of executive independence'* is reinforced by the conferment of special powers and responsibilities on the Governor. The Governor is also endowed with extensive legislative powers. He can issue orders-in-council when the Legislature is not in session, and he can, under this Clause, promulgate ordinances even against the wishes of the Legislature.

Lord Zetland on the nature of autonomy

The Marquess of Zetland claimed that the Bill carried the principle of transferring control from the British Parliament to Indian Ministers responsible to the Indian Legislatures a very long further step forward, for under its provisions the whole of the portfolios, with one almost negligible exception—that is to say the administration of backward tracts—would be entrusted to Ministers selected from and responsible to the Indian Legislatures. His lordship added

"The Bill does not, of course, complete that process, because in certain spheres defined in the Bill itself the Governors of the Provinces who will continue to be responsible to Parliament here, will be entitled to act in any way that they think right, even if in so doing they are acting contrary to the advice tendered to them by their Ministers." He suggested that these powers had been given "as much in the interests of the peoples of India as in the interests of this Country."†

* "We have no wish to underrate the legislative function; but in India the executive function is, in our judgment, of overriding importance. In the absence of disciplined political parties, the sense of responsibility may well be of slower growth in the Legislatures, and the threat of a dissolution can scarcely be the same potent instrument in a country where, by the operation of a system of communal representation, a new elected Legislature will often have the same complexion as the old". (*Report*, Vol. I, Part I, p. 13).

† *Debates*, House of Lords, 18 June, 1935.

The changes in the Provinces are to take place first. During the transition the present irresponsible system in the Centre will continue. Even when changes in the Centre, according to the new Act, will be in operation, the control by the Federal Government, especially by provisions intended to give the Provinces autonomy and yet retaining for the Centre a sort of general control over the field of provincial administration could not, Sir Tej Bahadur Sapru held, be anything but a mockery of provincial autonomy. It was difficult, he added, to conceive of responsible autonomous Governments working in harmony and co-operation with a Centre which was responsible only to British Parliament—a Centre which was still further enfeebled by the autonomy of the Provinces. Sir Tej Bahadur said that he felt so strongly on this question that he had little hesitation in saying that if the Centre was not to be a responsible Centre, but was to continue to be responsible to British Parliament and to be under the control of the Secretary of State, he would much rather postpone all changes in the Provinces.*

Need for adjustment in the Centre

Indian opinion has been consistently firm in the demand that autonomy of the provinces should be accompanied by the grant of responsibility, as it is understood and practised in countries governed under democratic constitutions. The theory of 'executive independence', the right of interference by the Governor-General and Parliament in several matters of detail, the conferment of special powers on the Governor to initiate legislation and to control finance,

Nature of changes in Provinces

* *Records,* Vol. III, p. 255.

the establishment of the Second Chamber with almost equal powers with the lower House, and numerous other devices which tend to limit and modify the responsibility of the Ministers and magnify the power of the executive detract considerably from real autonomy. It does not appear from all these that the Joint Parliamentary Committee have been able to pay due regard to the natural evolution of the existing government and the logical extension of its past tendencies in the settlement of this problem. While acknowledging the essential importance of satisfying Indian opinion in the settlement of a question in which Indians are so vitally affected, they confess that they have failed to do so. "We recognize", they admit, "that even moderate opinion in India has advocated and hoped for a simpler and more sweeping transfer of power than we have felt able to recommend".

4. The Problem of Constitutional Status

The Government of India Act (1935) has no preamble. The framers of the new Constitution have, however, attempted to make up for the absence of a preamble by keeping the preamble to the Act of 1919 intact. This has been done by providing specifically that although the Act, of which the preamble forms a part is repealed, the preamble stands. This is also noted in the Tenth Schedule appended to the Act which contains a list of the enactments that are repealed in consequence of the passing of the Government of India Act (1935).

Preamble of 1919 not repealed

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Joint Committee on the Preamble

While referring to the preamble in their Report, the Joint Parliamentary Committee stated that in it "Parliament has set out, finally and definitely, the ultimate aims of British rule in India" and that "subsequent statements of policy have added nothing to the substance of this declaration." The Committee quote it in full in their Report "as settling once for all the attitude of the British Parliament and people towards the political aspirations" of Indian people. The preamble runs thus :

"Whereas it is the declared policy of Parliament to provide for the increasing association of Indians in every branch of Indian administration, and for the gradual development of self-governing institutions, with a view to the progressive realisation of responsible government in British India as an integral part of the Empire ;

"And whereas progress in giving effect to this policy can only be achieved by successive stages, and it is expedient that substantial steps in this direction should now be taken ;

"And whereas the time and manner of each advance can be determined only by Parliament. upon whom responsibility lies for the welfare and advancement of the Indian peoples ;

"And whereas the action of Parliament in such matters must be guided by the co-operation received from those on whom new opportunities of service will be conferred, and by the extent to which it is found that confidence can be reposed in their sense of responsibility ;

"And whereas concurrently with the gradual development of self-governing institutions in the Provinces of India it is expedient to give to those Provinces in provincial matters the largest measure of independence of the Government of India, which is compatible with the due discharge by the latter of its own responsibilities ;

"Be it enacted, etc."

Government's explanation

In the Bill as originally drafted, the British Government had provided for repealing the Act of 1919, including the preamble. When, however, criticisms began to be made by responsible British statesmen as to the failure of the Government to implement the declarations in favour of Dominion Status, set forth in the preamble, they decided to retain the preamble of the Act of 1919 as a compromise and let the matter stand where it was. In moving the retention of the preamble in the House of Commons, Sir Thomas Inskip, the Attorney-General, on behalf of the Government, said that there were critics who took the view that it had a certain value as marking the definite intention of the British people, and not merely of the Government of the day, and that it would be just as well that no support should be given to the view that by repealing the Government of India Act, 1919, including the preamble, there had been any desire to go back upon the policy of Parliament in 1919. The Attorney-General also referred to the statement of Sir Samuel Hoare, the Secretary of State for India, who had on a previous occasion said that the present Government had no intention whatever of going back upon the expression of intention contained in the preamble. The course taken by them showed, the Attorney-General added, that some rather unusual importance was attached to a statement made sixteen years ago and that the present Parliament still regarded that as an accurate statement of the intentions of the British Parliament towards British India, associated as it would be, with the Indian States, in a Federation.*

Grounds of opposition

The original preamble itself did not find favour with Indians principally because of its restricted scope, ambiguous and vague import, absence of any provision of constituent powers, and explicit assumption of Parliamentary tutelage. The retention of the preamble was opposed in Parliament on two main grounds. It was urged that to repeal the Act of 1919 and at the same time to retain the preamble which formed its part, was a somewhat extraordinary and incongruous proce-

* *Debates*, House of Commons, 11 April, 1935.

dure.* The other point emphasised by Labour members, was that the preamble fell far short of what they regarded as adequately expressing their intentions, even in the Parliament of 1935, regarding the rights of the Indian people to self-government. Mr. Lansbury expressed regret that the Government had not taken their courage in both hands and definitely declared that the object of this legislation was to bring India ultimately into the British Commonwealth of Nations as an equal partner, with full Dominion Status.

No recognition of Dominion Status

Some of the utterances of responsible British statesmen which followed the passing of the Act of 1919 had, naturally led people to believe that His Majesty's Government would not allow the present opportunity to pass without an authoritative and unequivocal pronouncement recognising India's right to Dominion Status. But no such declaration about the goal of British Indian policy has been made.

British Indian Delegation's Suggestions

In their Joint Memorandum to the Joint Parliamentary Committee, the British Indian Delegation pointed out how Indian public opinion had been profoundly disturbed by the efforts made during the last few years to qualify the repeated pledges given by responsible British statesmen on behalf of His Majesty's Government. "Since it is apparently contended that

* Sir Hari Singh Gour, the distinguished Indian jurist, also expresses similar views. He points out that the preamble, separated as it has been from the original Act to which it was appended, is an "anachronism" and is "otiose". "The function of the preamble", he adds, "is to explain what is ambiguous in the enactment (Maxwell, p. 71). There is nothing ambiguous in the present Government of India Bill which provides for a measure of *representative* government and not any form of *democratic* government without which the term Dominion Status would be but a tinkling cymbal". (In a letter to the *Statesman*, February 14, 1935.)

only a definite statement in an Act of Parliament would be binding on future Parliaments, and that even the solemn declaration made by His Majesty the King-Emperor on a formal occasion is not authoritative, we feel," the Memorandum went on to state, "that a declaration in the preamble is essential in order to remove present grave misgivings and avoid future misunderstandings". The Delegation further suggested that the preamble to the Constitution Act should contain a definite statement that the 'natural issue of India's Constitutional progress is the attainment of Dominion Status'. *

* Sir Hari Singh Gour, in the course of the letter already quoted observed: "The absence of a preamble reiterating the grant of Dominion status as the objective of the British Policy in India is regarded as a serious blot on the Government of India Bill now before Parliament. But to a student of constitutional practice this omission seems deliberate, and is not surprising since any preamble embodying the promise suggested would be out of keeping with the terms of the entire Bill, so long as the communal electorates remain, and there are reservations for automatic resumption of power and the Princes' allegiance to the Crown is re-emphasized as condition precedent to their acceding certain defined and limited subjects to the federation. The term 'Dominion status' is not a term of art, but has obtained great vogue since the passing of the 9th Resolution at the Imperial War Conference on the 16th April 1917, which resulted in the enactment of the Statute of Westminster embodying the report of the Balfour Committee appointed in pursuance of that resolution, the terms of which deserve to be recalled :

"The Imperial War Conference are of opinion that the readjustment of constitutional relations of the component parts of the Empire is too important and intricate a subject to be dealt with during the War, and that it should form the subject of a special Imperial Conference to be convened as soon as possible after the cessation of hostilities.

"They deem it their duty, however, to place on record their view that any such readjustment, while thoroughly preserving

Sir Tej Bahadur Sapru also in his well-reasoned and amply documented Memorandum urged that the constitutional position of India should be definitely defined so that there might be no further difference of opinion as to what her destiny was going to be. He said that it appeared to him to be vitally necessary that the constitution itself should provide for India's equality of status with the other Dominions, so soon as she was able to set up under an Act of Parliament complete responsible Government. Sir Tej Bahadur further observed :

Sir Tej Sapru on pledges

"To argue at this distance of time that Parliament is bound by the preamble of the Government of India Act only, and that it makes no reference to Dominion Status, that the declarations made by Viceroys and Prime Ministers of His Majesty's Government are not binding on Parliament and that those pledges were conditional pledges and could not be given effect to unless those conditions were fulfilled in the minutest detail, will be to give a rude shock to the faith of those Indians who have honestly believed in the realisation of India's destiny as a self-governing dominion within the British Commonwealth of Nations, not in a remote and uncertain future, but in the near future. These pledges should be interpreted in a generous spirit and carried out without any unnecessary delay. Further, upon the fulfilment of those pledges, I submit, will depend the justification of those constitutional methods of co-opera-

all existing powers of self-government and complete control of domestic affairs, should be based upon a full recognition of the Dominions as autonomous nations of an Imperial Commonwealth, and of India as an important portion of the same; should recognise the right of the Dominions and India to an adequate voice in foreign policy, and in foreign relations, and should provide effective arrangements for continuous consultation in all important matters of common Imperial concern, and for such necessary concerted action founded on consultation, as the several governments may determine.'

"It will be remembered that this is the first official resolution in which the British Empire is described as the Imperial Commonwealth and India as an important portion of the same".

tion, without which the three Round Table Conferences would have been impossible."

Notable declarations

The more important among the pledges given to India in this regard may be recalled. In the message that King George V addressed to the various Legislatures in India, which was read by H. R. H. the Duke of Connaught, on the opening of the new Indian Legislature on the 8th February, 1921, His Majesty said: "For years, it may be for generations, patriotic and loyal Indians have dreamed of Swaraj for their Motherland. To-day you have the beginnings of Swaraj within my Empire, and the widest scope and ample opportunity for progress to the liberty which my other Dominions enjoy".

King George V

Mr. Winston Churchill

In a public speech to the Prime Ministers of the Dominions and representatives of India, Mr. Winston Churchill, in June, 1921, when he was Secretary of State for the Dominions and Colonies, said that "there was another great part of the Empire represented at that gathering which had not yet become a Dominion, but which moved forward under the Montagu scheme in the work which began with Lord Morley and was continued by Lord Chelmsford, towards a great Dominion Status," and, further, "We owed India that deep debt, and we look forward confidently to the days when the Indian Government and people would assume fully and completely their Dominion Status."

Lord Irwin

In the course of the public announcement made on the 31st October, 1929, which had the approval of the British Cabinet, Lord Irwin (now Viscount Halifax), pointed out that his own Instrument of Instructions from the King-Emperor expressly stated that "it is His Majesty's will and pleasure that the plan laid down by Parliament in 1919 should be the means by which British India may attain its due place among his Dominions." His Lordship added, "The Ministers of the Crown, moreover, have more than once publicly declared that it is the desire of the British Government that India should, in the fullness of time, take her place in the Empire in equal partnership with the Dominions. But in view of the doubts which have been expressed both in Great Britain and India regarding the interpre-

tation to be placed on the intentions of the British Government in enacting the statute of 1919, I am authorised on behalf of His Majesty's Government to state clearly that in their judgment it is implicit in the Declaration of 1917, that the natural issue of India's Constitutional progress as there contemplated is the attainment of Dominion Status."

Prime Minister Ramsay Macdonald

Subsequently, in concluding the proceedings of the First Round Table Conference in January, 1931, Mr. Ramsay Macdonald as Prime Minister said: "Finally, I hope, and trust, and pray that by our labours together India will come to possess the only thing she now lacks to give her the status of a Dominion amongst the British Commonwealth of Nations—what she now lacks for that—the responsibilities and the cares, the burdens and the difficulties, but the pride and the honour of responsible self-government."

The policy embodied in the Prime Minister's statement was approved by the British Parliament. Thereafter at the Second session of the Round Table Conference, Mr. Ramsay Macdonald repeated relevant sentences from his declaration at the First Round Table Conference. This was embodied in a White Paper on which there was a debate in Parliament. It is significant that the new National Government, consisting of all political parties in England, endorsed the policy of the Labour Government.

Mr. Attlee's Draft

In the alternative draft placed before the Joint Parliamentary Committee, Mr. Attlee gave a true interpretation of Indian feeling in this important matter. He had no doubt, he said, that in India these various statements and pledges were understood in their natural meaning. In this circumstance, India could, he thought, look forward to attaining within a reasonable period of time the same status as that of the other Dominions of the British Commonwealth. Nothing would, therefore, be more unfortunate for the creation of a fruitful partnership between the British people and the people of India than that words understood in one sense should be subsequently explained away and given a different meaning. England, Mr. Attlee urged, was bound to implement this pledge of honour. It was desirable,

therefore, that the new constitution should contain a declaration stating beyond all cavil that it was the intention of Britain to grant full Dominion Status to India within a measurable period of years and that the Constitution itself should contain possibilities of expansion and development which might, without further Act of Parliament, realise that objective.

Debate in Parliament

The matter formed the subject of discussion and debate before the Joint Parliamentary Committee and Parliament. The view in favour of a clear and unambiguous declaration of the nature described above was vigorously urged by distinguished members of Parliament. The result was nothing more than that the Government decided not to repeal the preamble of the Act of 1919.

Sir Samuel Hoare's statement

The position of the British Government was defined thus by Sir Samuel Hoare in the House of Commons : "They stand firmly by the pledge contained in the 1919 preamble, which it is no part of their plan to repeal, and by the interpretation put by the Viceroy in 1929, on the authority of the Government of the day, on that Preamble that : 'The natural issue of India's progress as then contemplated is the attainment of Dominion Status.' The Declaration of 1929 was made to remove doubts which had been felt as to the meaning of the Preamble of 1919. There is, therefore, no need to enshrine in an Act words and pledges which would add nothing new to the declaration of the Preamble. In saying that we stand by our pledges I include, of course, not only pledges given to British India, and to Burma, as part of British India, but also our engagements with the Indian States."*

* *Debates*, House of Commons, 6 February, 1935.

Sir Herbert Samuel's Protest

Sir Herbert Samuel, the Liberal leader, very appropriately observed in the House of Commons that many would find it difficult to understand why it was that if the preamble meant the same as the declaration of Lord Irwin as Viceroy and the preamble was to be continued, Parliament should not specifically make any reference to the Viceroy's declaration, and why a phrase which was suitable for employment in a Viceregal declaration and in a Ministerial statement made by the Secretary of State for India in Parliament, was not suitable for inclusion in any form in any statute.

Statute of Westminster not to apply

The Statute of Westminster, which was enacted in 1931, gave, for the first time, legal sanction to the autonomy of the British Dominions. The British Government are not prepared at present to concede the same status to India. If, however, a pledge of Dominion Status had already been given before the enactment of the Statute of Westminster it is difficult to see how the pledge could be altered as a reason of the legal sanction subsequently accorded to the Dominions.

5. British Parliamentary Control

Principle underlying Montagu-Chelmsford scheme

When the Montagu-Chelmsford scheme of constitutional reform was introduced it was based on the principle of responsible government, qualified by the condition that the goal of responsible government was to be realised by progressive stages. The natural corollary of the policy thus indicated was the introduction of a system "by means of which, at regular stages, the element of responsibility can be continuously enlarged and that of official control continuously diminished". As we have already pointed out,

it was the intention of the authors of that Constitution that there should, on the one hand, be a gradual abatement in the intervention of the British Parliament in Indian affairs, especially in those cases in which the Government of India and non-official Indian opinion were in accord, and, on the other, the introduction of the principle of responsibility of the executive to the Legislature. A relaxation of control exercised over the Government of India by the Secretary of State or the Secretary of State in Council was, accordingly, provided for. In fact, considerable devolution of powers in this sphere, has been effected with the approval of the British Parliament.

Deviations in the New Constitution

The sponsors of the new Constitution declare their adherence to the principle of responsible government. But, at the same time, provisions are incorporated in the Constitution which militate against the spirit and practice of responsible government. The provisions regarding the Instrument of Instructions serve as an illustration of this. The White Paper proposed that the drafts of Instruments of Instructions to the Governor-General and Governors, including the drafts of any amendments thereto, would be laid before both Houses of Parliament and opportunity would be provided for each House of Parliament to make to His Majesty any representation which that House might desire to make for any amendment to, or addition to, or omission from the Instructions.

The Instrument of Instructions

The Joint Committee while describing the proposal as a novel one gave their seal of approval to it. They said: "There is, we think, ample justification for this proposal, which has been rightly extended not only to

the original Instrument but also to any subsequent amendments of it ; and we are satisfied that in no other way can Parliament so effectively exercise an influence upon Indian constitutional development. It is essential that the vital importance of the Instrument of Instructions in the evolution of the new Indian Constitution should be fully appreciated. Thus, Ministers would have no constitutional right under the Act to tender advice upon a matter declared by the Act to be within the Governor's own discretion ; but the Governor could in any event, and doubtless often would, consult them before his own decision was made ; and if at some future time it seemed that this power of consultation might with safety be made mandatory and not permissive, we can see nothing inconsistent with the Act in an amendment of the Instrument of Instructions for such a purpose. But so grave are the issues involved in the evolution of the Indian Constitution that it would be neither wise nor safe to deny Parliament a voice in the determination of its progressive stages. The initiative in proposing any change in the Instrument must necessarily rest with the Crown's advisers, that is to say, with the government of the day ; but the consequences of any action taken may be so far-reaching and so difficult to foresee that Parliament, if denied a prior right of intervention, may find itself compromised in the discharge of the responsibilities which it has assumed towards India, and yet powerless to do anything save to protest. For this reason we are clearly of opinion that, as the White Paper proposes, it is with Parliament that the final word should rest." The Joint Committee suggested as the appropriate procedure that the Crown should communicate to Parliament a draft of the proposed Instrument or of any subsequent amendments and that Parliament will, if it sees fit, present an Address praying that the Instrument should issue in the form of the draft or with such modifications as are agreed by both Houses, as the case may be. Provisions relating to Instrument of Instructions have accordingly been framed and inserted in the new Act. But it is at the same time provided that the validity of any Act of the Governor-General shall not be called in question on the ground of its incompatibility with the provisions of the

Joint Committee on the new procedure

Instrument of Instructions which is not a part of the Act.

Sir Samuel Hoare explains

Sir Samuel Hoare in moving the Second reading of the Bill observed: "Constitutional experts will remember the part the Instruments of Instruction played in other parts of the Empire. In the case of India they are of peculiar importance because, where the situation is as complicated as this situation is, it is essential that the Viceroy and the Governors should be given clear instructions as to the spirit in which they are to carry out their duties. It is equally important from the point of view of Indians, because in the nature of things this Constitution is a rigid Constitution, and it can only be amended by future Acts of Parliament . . . . We are proposing to adopt the procedure recommended by the Committee that, for the first time in our history, the Draft Instructions should receive the Parliamentary sanction of both Houses". He added that "they will not be inserted in a Schedule to the Bill, for the obvious reason that, if they were, they would be interpretable by the Federal Court".*

Criticism by Sir Herbert Samuel

Replying to Mr. Churchill, in the House of Commons, the Secretary of State for India made it definite that for all future amendments the sanction of both Houses of Parliament would be necessary. In the course of the discussion, Sir Herbert Samuel said that it was quite new to make the Instrument of Instructions a statutory document. He did not know that there was any precedent for that in their constitutional arangements, and he asked the Government to consider very carefully what its effect would be upon them in future between His Majesty's Government then and the Government of India, particularly when it was a

* *Debates*, House of Commons, 6 February, 1935.

question of amending by instructions what had been given by a previous Government. "It really means," Sir Herbert explained, "that each House, and, therefore, the House of Lords, equally with the House of Commons, would have effective control over any Amendments which the executive of the day desired to issue to the Viceroy, who represented His Majesty in India." "It means", another member said, "that the future development of India so long as another place exists, if it is not swept away by an indignant British democracy, lies entirely in the hands of the party opposite (Conservative). They alone control the growth and development of the Indian Constitution. It may be a very pleasent feeling to them, but members on this side and people of India cannot be expected to regard it with the same kind of pleasure and equanimity."*

Mr. Wedgwood Benn's comments

The implications of these provisions have been lucidly explained by a former Secretary of State, the Rt. Hon. Wedgwood Benn, in the course of an article on the "The Outlook on the Indian Reform". There he writes: "A curious feature of the plan was an alteration in the method of framing the Governor-General's Instrument of Instructions. Hitherto this has been an Executive Act of the British Cabinet. Now for the first time it has been made a Parliamentary Document or rather, a definite matter of quasi-legislation. It must be submitted both to the House of Commons and the House of Lords for approval. From the British angle this is a constitutional innovation, for the Lords have never hitherto been permitted to have any control over Administration. From the Indian point of view the effect is to deprive any future government of a freedom which all have hitherto enjoyed. In a word, should a Labour Government be elected to power at some future date it would be subject in this matter to the control of a House entirely unaffected by the electoral decision which had placed the Government itself in office. It is unfortunate that the House of Lords should be brought again into a prominent position

* Mr. F. S. Cocks in the House of Commons, 8 February, 1935.

in Indian Affairs. Their resolution which appeared in a measure to condone the massacre of Amritsar, is not forgotten."*

Procedure re: Orders in Council

The provisions incorporated in the new Constitution in regard to Instrument of Instructions illustrate how the control of the British Parliament has been superimposed, making it possible for Parliament to interfere in matters in which it had hitherto exercised no power of interposition. There is yet another important group of provisions, namely, those relating to Orders in Council, that would increase the opportunities of British Parliament to interfere in matters of numerous details of administration and policy. This would make it difficult to introduce any progressive policy, even when a future Government may propose any reasonable reform within the framework of the Constitution, owing to the opposition of the unrepresentative and unprogressive House of Lords.

Its implications

We have in a preceding section referred to some of the more important matters in which such provisions will have application. The provisions are based on the suggestion of the White Paper, supported by the Joint Parliamentary Committee, that the regulation of certain matters should be prescribed in detail by His Majesty in Council after the Constitution Act is passed and that any subsequent variations should be effected in the same manner. In this connection, it has to be borne in mind that Orders in Council are commonly made by the British Government upon the advice of Ministers without the intervention of Parliament. In certain cases, of course, a procedure is followed in which both Houses of Parliament are enabled to consider and approve the drafts of any proposed Orders before they are finally submitted to His Majesty. But there is a world of difference between the normal system

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* *The Political Quarterly*, July—September, 1935.

in such matters relating to the United Kingdom, and the procedure to be followed in the case of India. While in the former case, the parties affected by any change or amendment are always able to represent their case before both Houses of Parliament, in the case of India the people concerned living many thousand miles away will have almost no opportunity of setting forth their views before Parliament.* In many such cases, in the United Kingdom, "the validity of such statutory legislation may be judicially challenged, and if any such legislation is held to be invalid, it may be treated as void or quashed". Even so, Lord Hewart, Lord Chief Justice of England, in his work, *The New Despotism,* disclosed the lurking danger of such a system in his own country.

'The New Despotism'

6. Constituent Powers

The powers that a constitution provides for amending, or introducing changes in, its provi-

* In the course of discussions on the Bill, Sir Herbert Samuel made very appropriate observations with reference to the one-sided character of the discussions, when Indian matters were considered by the British Parliament. He asked the members to remember that they were sitting in judgment there in a case, and one of the parties to the case was not represented there. In fact, he might have added that the principal party went unrepresented. "There are", he said "no Indian in this House to-day. I remember times, in previous Parliaments in which I have sat, when there were distinguished Indian gentlemen who had obtained places in the House of Commons. In earlier times, in the eighteenth century, the Colonies had their accredited agents in this House, who could speak on their behalf by instructions from the people of those Colonies, but now there is no one here who can state, on behalf of the Indians themselves, the case which they would desire to be submitted. The judges are here, the jury is here, and the counsel on one side is here, but the counsel on the other side is thousands of miles away, and I hope that, that will be remembered always, on every occasion when Members of this House come to consider specific proposals". (*Debates,* House of Commons, 6 February, 1935).

sions are called "Constituent Powers". The Joint Parliamentary Committee, however, describe constituent powers as: "The powers conferred by the Constitution Act upon some authority other than Parliament to vary specified provisions of the Act, whether or not such variation is required by the Act to be subject to the approval of Parliament."

It is laid down in the Government of India Act (1935) that nothing in the Act shall empower the Federal Legislature or any Provincial Legislature to make any amendments to the Act, except that in certain specified matters such Legislatures may recommend changes under certain prescribed conditions.* This does not, however, preclude the British Parliament from making amendments introducing changes in the Constitution, affecting British India or any part thereof whenever it may deem such action necessary.

British Government's point of view

The attitude of His Majesty's Government on the subject, was revealed in the Report of the Third Round Table Conference. The authority of Parliament to decide any issues which might present themselves involving changes of a substantial character in the Constitution should, it was urged there, be left unimpaired. But, the Government added, they would undertake to see that any provisions designed to set up a machinery which might obviate the disadvantages and inconve-

* The Act contains certain provisions which require the prior sanction of the Governor-General or Governor for certain legislative purposes. The provisions relate to important spheres of the activities of the Government. These provisions, on the one hand, unduly restrict the powers of the legislatures and, on the other, are liable to impinge on the exercise of even the circumscribed power with which the Legislatures have been invested. (Vide, Sections 108 and 109 of the Government of India Act, 1935.)

niences to be contemplated from the lack of means to secure any alteration of the details of the Constitution should be framed. In the White Paper this attitude of the Government was made still more explicit.

Proposals for amending certain provisions

The Act provides for the amendment, under certain specified conditions, in accordance with a prescribed procedure, provisions relating to the size or composition of the Chambers of the Federal and Provincial Legislatures, the method of choosing or the qualifications of members of the Legislatures and franchise. **Sec. 308**

But such amendments cannot be recommended (*a*) before ten years have elapsed after the establishment of the Federal Legislature in the case of resolutions of such Legislature, and (*b*) in the case of resolutions of a Provincial Legislature, before ten years have elapsed after the establishment of Provincial Autonomy.

This time limit does not, however, apply with reference to any amendment providing that, in case of women, literacy shall be substituted for any higher educational standard for the time being required as a qualification for the franchise or providing that women, if duly qualified, shall be entered in electoral rolls without any application being made for the purpose by them or on their behalf.

Views of minorities to be ascertained

His Majesty in Council may, however, at any time make in the provisions of the Act any amendment of the nature described in the preceding paragraphs, provided that if the proposal of His Majesty in Council is not preceded by any address for submission to His Majesty praying that His Majesty may be pleased to communicate such recommendations to Parliament in such manner as is laid in the case of such amendments, then before the draft of any Order which it is proposed to submit to His Majesty is laid before Parliament, the Secretary of State shall, unless it appears to him that the proposed amendment is of a minor or drafting nature, take such steps as His Majesty may direct for ascertaining the views of the Governments and Legisla-

tures in India who would be affected by the proposed amendment and the views of any minority likely to be so affected, and whether a majority of the representatives of that minority in the Federal or, as the case may be, Provincial Legislature support the proposal.* It is laid down that the provisions of the First Schedule to the Act, dealing with the representation of the States, shall not be amended without the consent of the Ruler of any State which will be affected by the amendment.

Amendment by Order in Council

The Joint Parliamentary Committee in their Report suggested that there were various matters which must be capable, from the beginning, of modification and adjustment by some means other than amending legislation in Parliament. They recommended that the requisite powers for ensuring elasticity, where it was necessary, should be placed by the Act in the hands of His Majesty's Government, but subject, nevertheless, to the control of Parliament. The matters which have been proposed to be prescribed by Order in Council may be grouped under two categories. First, there are certain administrative matters relating to payments and allowances to be made to the Governor-General, his Counsellors, Governors, etc. But there are other matters to be prescribed which are of an essentially different nature. These relate to a variety of matters, such as, subventions to deficit provinces; provincial share of income-tax; certain contributions to be made by the States to Federal revenues; excluded and partially excluded areas; qualifications of electors to Provincial and Federal legislatures; the method of election or

* The latter part of the Section relating to minorities was inserted at the suggestion of Lord Linlithgow. (*Debates*, House of Lords, 8 July, 1935.) Also see, Appendix C, Chapter IV.

representatives of communal and other interests; delimitation of constituencies, etc.

Some of these matters, the Committee pointed out, could scarcely be determined until after the Constitution Act was on the statute book ; and to set out the others in the Act itself would add greatly to its length and complexity. The Committee recommended that in this circumstance the procedure of Order in Council, with a power to modify subsequently by the same method, was both necessary and appropriate. They further recommended that the same method should be applied to the revision or adjustment of provincial boundaries.

Parliamentary approval for draft Orders

In the determination of all matters in the second category, the Joint Parliamentary Committee thought it essential that Parliament should have a voice; and they recommended that a provision should be included in the Constitution Act requiring every Order in Council relating to them to be laid in draft before both Houses of Parliament for approval by affirmative resolution. The Government of India Act accordingly provides that the Secretary of State shall lay before Parliament the draft of any Order which it is proposed to recommend His Majesty to make, and no further proceedings shall be taken in relation to it except in pursuance of an address presented to His Majesty by both Houses of Parliament praying that the Order may be made either in the form of the draft, or with such amendments as may have been agreed to by resolution of both Houses. **Sec. 309**

It is provided, further, that if at any time when Parliament, or when both Houses of Parliament, are adjourned for more than fourteen days, the Secretary of State is of opinion that on account of urgency an Order in Council should be made under the Act forthwith, it would not be necessary for a draft of the Order to be laid before Parliament. In such a case, however, the

Order will cease to have effect at the expiration of twenty-eight days from the date on which the House of Commons first sits after the making of the Order, unless within that period resolutions approving the making of the Order are passed by both Houses of Parliament.

It is provided that, subject to any express provisions of the Act, His Majesty in Council may by a subsequent Order, made in accordance with the provisions of the preceding paragraph, revoke or vary any Order previously made by him in Council under the Act. The subject matter of Orders in Council will necessarily cover an enormously yast field. In view of this, scrutinising Committees have to be set up by both Houses of Parliament.

Simon Commission on development of the Constitution

It may be recalled in this connection that the Indian Statutory Commission had stated that the first principle which they would lay down was that the new Constitution should, as far as possible, contain within itself provision for its own development.

"It has been a characteristic of the evolution of responsible government in other parts of the British Empire that the details of the Constitution have not been exhaustively defined in statutory language. On the contrary, the Constitution of the self-governing parts of the British Empire have developed as the result of natural growth, and progress has depended not so much on changes made at intervals in the language of an Act of Parliament, as on the development of conventions, and on the terms of instructions issued from time to time to the Crown's representative. The Preamble to the Government of India Act declares that progress in giving effect to the policy of the progressive realisation of responsible government in British India can only be achieved by successive stages; but there is no reason why the length of these successive stages should be defined in advance, or why every stage should be marked by a commission of inquiry. We are profoundly convinced that this method of inquiry at stated intervals

has had a most injurious effect on the working of the reformed Constitution, and on Indian political life".

The Indian Statutory Commission added that what was required was a constitution which, without doing this, would contain some element of elasticity enabling adjustments to be made in accordance with the conditions actually obtaining in any given province at any particular time.*

Suggestion by Indian Delegates

Although members of the Indian Round Table Conference had urged the need of some arrangement by which the Indian Legislature should be empowered to initiate proposals for constitutional change, His Majesty's Government did not favour such a step. At a subsequent stage, the British Indian Delegation in their Memorandum attempted to impress on the Joint Parliamentary Committee the essential importance of including definite provisions for some plan of automatic constitutional development. This view was further re-inforced by Sir Tej Bahadur Sapru. He pressed in his Memorandum the point that the Constitution should provide for constituent powers being vested in the Indian Legislature. He pointed out that when the statute itself reserved certain departments, and placed responsibility for their administration on the Governor-General, no constitutional developments short of an amending Act by Parliament could at any time shift the centre of responsibility from the Governor-General to the Legislature.

Criticism in Parliament

In the course of the discussion of the measure before Parliament a member described it as "a fixed plan of government, permanent and unalterable, unless it is changed by a future British Parliament". The member added: "The machinery contains much material which is not Indian and which is designed to retain the power of Britain in matters vital to India's interests."† Among others, Mr. Attlee condemned the arrangement by which the Indian Constitution has been deprived of any power of self-development. He said: "Take the question of constituent rights. Such as they are in the Bill, Indians

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* *Report of Indian Statutory Commission,* Vol. II, pp. 5-8.

† Mr. David Grenfell in the House of Commons on the 7th February, 1935 during the debate on the Second Reading.

may ask for alterations in 10 years. They may come to this House and ask for changes, and this House may or may not give them, but either before or after the 10 years the Government of this country, without having to ask for authority and after mere consultation, may change these constituent rights. Can one wonder, on reading the provisions of the Bill, that the Indians feel an inequality of status It is Robinson Crusoe's ship. The hull is designed by Robinson Crusoe and at every point the Indians are very little better than Man Friday. There is inequality of status running right through the Bill."*

* Mr. T. R. Venkataram Sastri in his Presidential address at the last session of the National Liberal Federation held at the end of December, 1935, at Nagpur, also vigorously assailed the provisions of the new Constitution which conditioned that "every future change in it must come from the United Kingdom either in the shape of a Parliamentary statute or in the shape of His Majesty's Order in Council" and that no constitutional step forward was possible even if, in any matter, the Legislature in India was unanimous.

CHAPTER THREE

CROWN AND THE CONSTITUTION

I

The Crown occupies a very important position in the Indian Constitution. British India is, at present, governed by, and in the name of, the British Crown. All rights which, if the Government of India Act, 1858, had not been passed, might have been exercised by the East India Company in relation to any territories, are exercised by and in the name of His Majesty the King, Emperor of India, as rights incidental to the government of India. The Crown also exercises rights and authority and possesses jurisdiction over territories in India ruled by Indian Princes, each governing his State under the suzerainty or overlordship of the British Crown. All such rights, authority and jurisdiction are at present exercised on behalf of the Crown, by the Governor General in Council, under the general control of the Secretary of State for India.

Present position of Crown

The legal basis of the new Constitution is the resumption into the hands of the Crown of all rights, authority and jurisdiction in and over the territories of British India, whether they are at present vested in the Secretary of State, the Secretary of State in Council, the Governor-General in Council or in the Provincial Governments and Administrations, and their redistribution in such manner as the

Government of India by the Crown

Sec. 2

Act provides between the Central Government on the one hand and the Provinces on the other. In a similar manner 'any powers connected with the exercise of the functions of the Crown in its relations with Indian States' shall be resumed in their entirety into the hands of the Crown. In so far as these powers are not distributed to the various authorities by the Act, His Majesty is free to delegate such of those as are outside the strict ambit of the Act, as he may think fit, to the Governor-General or Governors, to be exercised on his behalf. The consequence of this Bill will, therefore, be that the Federal Executive and each provincial Executive will by direct legislation from the Crown exercise independently on behalf of the King the powers respectively vested in them by this Bill, subject to superintendence by the Secretary of State over the Governor-General and Governors in certain directions.

Resumption of all powers by Crown

II

Accession of States to Federation

Sec. 5

It is provided that the Ruler of a State may, in accordance with a prescribed procedure, signify to the Crown his willingness to accede to the Federation, of which the British Indian Provinces, and such of the States as agree to accede to it, as a volutary act, will be constituted units. The Ruler of a State proposing to join the Federation shall signify his willingness to accede to the Federation by executing an Instrument of Accession. This will allow the power and jurisdiction of the Ruler, in respect of those matters which he agrees to recognise as Federal subjects, to be exercised by the Federal authorities brought into existence by the Act, namely, the Governor-General, the Federal Legislature and the Federal Court. It is provided that the Instrument should, as far as possible, follow a standard form,

though it is recognised that the list of subjects accepted by a Ruler as federal may not be identical in the case of every State. In cases in which the exceptions or reservations sought to be made by a Ruler are such as to make the accession 'illusory' or 'merely colourable', there is no obligation on the Crown to accept such accession. There will be no compulsion so far as the States are concerned ; their Rulers may enter or stand aside as they think fit.*

Crown's power to refuse accession

Sec. 6

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* In the course of a discussion on the accession of Indian States (Sec. 6), Sir Samuel Hoare in elucidating the position of the States *vis-a-vis* the Federal legislative list, said: "Certainly we are not going to have any Princes acceding to the Federation with this kind of limited liability system. Perhaps I cannot do better than read to the House the answer I gave upon this subject in my cross-examination in the Joint Select Committee to one of the 10,000 odd questions that I answered in that Committee. These are my words: 'We contemplate that Items 1 to 45'—those are the items that now appear in the Seventh Schedule and they are the items in the Federal list—'of List will be the normal field over which the States will surrender their powers'. I pause at this point to draw the attention of the Committee to the fact that Items 1 to 45 cover a very wide field of government. I pass to the conclusion that I draw from it. First, the States will be invited to accept the first 45 items as Federal subjects. They will, of course, be free to accept other subjects if they so wish. Secondly, there will and must, be some variation from State to State either in the number of subjects or in the qualifications which they attach to their acceptance—

States and legislative powers of Federation

Sir Samuel Hoare's statement

Mr. Churchill: Within the 45?

Sir S. Hoare: Within the 45—these variations arising from the different circumstances of the States and the different treaty rights which they may wish to preserve. It will, however—and this is the statement that I emphasise again—rest with the Crown to accept or reject proposals for accession, and the House—here, again, I emphasise this point—will be in due course in full possession of all the facts upon which acceptance or rejection has been based. In order to make it quite clear to Hon. Members in this Committee that there is no intention whatever of accepting inadequate conditions of accession, I give once again the undertaking to the Committee

Minimum conditions of accession

Accession subsequent to establishment of Federation

Sec. 6

After the establishment of the Federation the request of a Ruler that his State may be admitted to the Federation shall be transmitted to His Majesty through the Governor-General. After the expiration of twenty years from the establishment of the Federation the Governor-General shall not transmit to His Majesty any such request until there has been presented to him by each Chamber of the Federal Legislature, for submission to His Majesty, an address praying that His Majesty may be pleased to admit the State into the Federation.

It is laid down that the Federation is to be brought into existence by the issue of a Pro-

that the Instruments of Accession will be issued in the form of a White Paper before the House is asked to consider a Proclamation bringing in the Federation, and the House, before it pledges itself to Federation, will be in a position to judge whether the accessions have been really effective or not."

Withdrawal of powers once surrendered not to be allowed

The answers of the Secretary of State regarding two other cognate issues were as follows: "A question was asked me by my Right Hon. Friend the Member for Tamworth (Sir A. Steel-Maitland), namely: Do the limitations and conditions that may be asked for apply only to the subjects in List No. 1 or also to the subjects in List No. 3, the concurrent list? The answer is that if, which is not very likely but is possible under the Clause, any ruler of a State accepted as Federal in his State a subject included in the concurrent list, he could apply conditions in regard to his acceptance of that subject in the same way as he can apply conditions to his acceptance of any subject in List No. 1. Does the provision in Sub-section (2) of Clause 6 for supplementary declarations mean that a Ruler having once declared his acceptance of such and such Federal subjects, subject to such and such qualifications, can by a subsequent instrument withdraw his acceptance of any federal subject or add fresh qualifications or limitations to it? The answer is, 'No'. The intention of Sub-section (2) is to enable a ruler who has accepted, say, 40 subjects as Federal, to signify his acceptance of further subjects or, alternatively, having accepted a particular item, subject to qualifications, to restrict those qualifications". (*Debates*, House of Commons, 27 February, 1935).

clamation by His Majesty. No such Proclamation is, however, to be made until the Rulers of States representng not less than half the aggregate population of the States, and entitled to not less than half the seats to be allotted to the States in the Federal Upper Chamber have signified to His Majesty their desire to accede to the Federation.

Proclamation of Federation

Sec. 5

Outside the limits defined by the Instrument of Accession of each State the autonomy of the States and their relations with the Crown will not be affected in any way by the Act. Outside the Federal sphere, the States' relations will be exclusively with the Crown and the right to tender advice in such matters will lie with His Majesty's Government. It is provided that any powers connected with the exercise of the functions of the Crown in its relations with States shall, in India, if not exercised by His Majesty, be exercised only by, or by persons acting under the authority of, His Majesty's Representative for the exercise of such functions of the Crown.*

Relation of Crown with States

Sec. 2

* With regard to the exercise, on behalf of the Crown, of the rights of Paramountcy in relation to the States, the White Paper proposed that they should in future be exercised by the Representative of the Crown in his capacity as Viceroy; and that, in order to put the distinction beyond doubt, the office of Governor-General should be severed from that of Viceroy. The Joint Committee agreed that there must be legal differentiation of functions in the future; and observed that it may well be that His Majesty will be pleased to constitute two separate offices for this purpose. But they recommended that the title of Viceroy should attach to him in his double capacity. They added: "This suggestion involves no departure from the underlying principle of the White Paper that, outside the federal sphere, the States' relations will be exclusively with the Crown and that the right to tender advice

III

The Governor-General of India and His Majesty's Representative

Sec. 3

There are thus two groups of functions which will have to be performed on behalf of the Crown, namely, first those relating to the Federation, including those in respect of which the Rulers of States joining the Federation have signified their acceptance, and the Provinces; and secondly those concerned with States' relations outside the federal sphere. The functions included in the first group are to be performed by the Governor-General and those in the other group by His Majesty's Representative.* It shall be lawful for the Crown to appoint one person to fill both the said offices. It has accordingly been declared that for the present the Governor-General will hold both the offices. There shall also be a Commander-in

Commander-in-Chief

Sec. 4

to the Crown in this regard will lie with His Majesty's Government." In the Bill, the distinctive title of His Majesty's Representative was introduced. The word Viceroy does not appear in the Act.

* The relevant portion of the Section reads as follows :—

3. (1) The Governor-General of India is appointed by His Majesty by a Commission under the Royal Sign Manual and has—

(*a*) all such powers and duties as are conferred or imposed on him by or under this Act; and

(*b*) such other powers of His Majesty, not being powers connected with the exercise of the functions of the Crown in its relations with Indian States, as His Majesty may be pleased to assign to him.

(2) His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States is appointed by His Majesty in like manner and has such powers and duties in connection with the exercise of those functions (not being powers or duties conferred or imposed by or under this Act on the Governor-General) as His Majesty may be pleased to assign to him.

Chief of His Majesty's Forces in India appointed by Warrant under the Royal Sign Manual.

Use of armed forces in discharge of Crown's functions in relation to States

His Majesty's Representative is entrusted with certain special powers in the matter of the use of His Majesty's forces in connection with the discharge of the functions of the Crown in its relations with the States. It is laid down that if His Majesty's Representative in the due discharge of such functions requests the assistance of armed forces it shall be the duty of the Governor-General in the exercise of the executive authority of the Federation to cause the necessary forces to be employed accordingly. The net additional expenses, if any incurred for such purpose shall, it is further provided, be deemed to be expenses of His Majesty incurred in discharging the said functions of the Crown. The Governor-General shall, in discharging such functions, act in his discretion. **Sec. 286**

Governors and Provincial staff to assist Political Department

It is provided that arrangements may be made between His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States and the Governor of any Province for the discharge by the Governor and officers serving in connection with the affairs of the Province of powers and duties in connection with the exercise of the said functions of the Crown. **Sec. 287**

Prerogative rights of Crown

The rights of the Crown fall into two categories, namely, prerogative and statutory. As an instance of the first class, may be mentioned the prerogative of mercy. It is laid down that no authority outside the Province, except the Governor-General, shall have any power to suspend, remit or commute a sentence of death passed on any person convicted in the Province. It is, however, further provided, that nothing in the Act shall derogate from the right of His Majesty, or of the Governor-General if any such right is delegated to him, to grant pardon, reprieve, respites or remissions of punishment. The exemption from criminal or civil liability that the Crown enjoys is another example of such rights. **Sec. 295**

The statutory rights of the Crown refer to a large variety of subjects. These include such matters as the

Statutory rights

provisions relating to the Accession of Indian States to the Federation, the Instrument of Instructions to the Governor-General and Governors, the Assent to Bills and the power of the Crown to disallow Acts, the establishment and constitution of the Federal Court, the constitution or reconstitution of High Courts by letters patent, the use of His Majesty's forces in connection with the discharge of functions of the Crown in its relations with the States, the appointment of the Governor-General, the Governors, the Commander-in-Chief, etc., the expenses of the Crown in connection with the Indian States, the audit of accounts relating to the discharge of the functions of the Crown in relation to Indian States, the contracts in connection with the functions of the Crown in its relation with Indian States, the control of His Majesty as to defence appointments, the Advisers to the Secretary of State, etc.

Exercise of Crown's powers

It must be remembered that such powers as the British Crown possesses are exercised through ministers responsible to the electorate through Parliament.* The Secretary of State

* Professor A. B. Keith points out that "though the executive authority of the Crown under the common law is large and important, many new powers have been conferred on the executive by statute to meet the new economic conditions and social developments, while in other cases existing powers have been regulated and defined. Judicial matters have long been the subject of express statutory regulation. The result of the intervention of the legislature has been that in the United Kingdom the prerogative of the Crown, that is to say, its rights at common law, has been entirely abolished as regards legislation proper." . . . . "Under many Acts the King in Council is authorised to make legal rules which have the force of a statute, but this power is statutory and does not rest on the prerogative. In judicial matters the power of the Crown to establish courts is strictly limited by statute. In the executive sphere alone are there still large tracts in which the prerogative remains unfettered" . . . . "In the rest of the Empire, ... the prerogative also embraces certain rights which are obsolete in England, or inapplicable; thus in any settled territory the Crown has the right to create a con-

is the Crown's responsible agent for the exercise of all authority vested in the Crown in relation to the affairs of India, and for the exercise also of certain authority which he derives directly from powers formerly vested in the Court of Directors and the Court of Proprietors of the East India Company.*

stitution with a legislature on the English model with elective lower house; once created, such a legislature alone ca: enact laws for that territory . . . . . The form of this prerogative legislation is varied, Letters Patent under the Great Seal, Orders of the King in Council, or Charters of Justice, but in essence they all come to the same thing, they represent the formal expression of the will of the sovereign expressed with the approval of his Privy Council, the action being taken on the advice of the responsible minister, now the Secretary of State for the Colonies".

* *Joint Committee's Report*, Vol. I, Part 1.

CHAPTER FOUR

PROVINCIAL GOVERNMENT

Provincial Autonomy to come first

Though the provisions in the Act relating to "The Governors' Provinces" (Part III) logically follow those relating to "The Federation of India" (Part II), the Act provides for the inauguration of the Provincial system first and Federation as a contingency. Until the establishment of the Federation certain provisions of the Government of India Act, 1919, shall continue in force.* The Joint Parliamentary Committee's Report, on which the present Act is principally based, also discusses the subject of 'Provincial Autonomy' before Federation, as being of greater immediate importance.

Sir Tej Bahadur on changes by instalments

The dangers inherent in the introduction of Provincial Autonomy without a simultaneous introduction of responsible government at the centre, had been repeatedly explained during the constitutional discussions of the last few years. Sir Tej Bahadur Sapru in his Memorandum to the Joint Committee emphasised that view. He said: "To create autonomous provinces with responsible government functioning in them, and to link them up to a Centre which is to continue to be responsible to British Parliament, will only tend to frustrate the object of those who believe in the necessity of a strong centre, and may seriously lead to the breaking up of that unity of India, which it has taken more

* *Vide* sec. 317 and the Ninth Schedule to the Act of 1935. The relevant sections of the Act of 1919 are 36-43 (Governor-General's Executive Council); 63-64, 67-69, 72 (Indian Legislature); 85-87, 89, 92-93 (Salaries, leave of absence, vacation of office, etc.); and 129A (Provisions as to rules). See also Appendix B on 'Transitional Provisions'.

than a century to build up. Autonomous provinces may, and probably will prove too strong for an unreformed Centre. An arrangement of this character will, it is apprehended, promote friction instead of co-operation, between province and province, and between provinces on one side, and the Centre on the other. Lastly, an unaltered Centre will be the object of concentrated attack in British India ; it will have no moral backing in the country, and instead of playing the part of a unifying factor, will be treated as a rival standing in the way of the provinces."*

Date and Cost of Autonomy

It is laid down that on such date 'as His Majesty in Council may appoint' the provisions of the Act, excepting the federal part, shall come into force.† But the introduction of provincial autonomy will be preceded by an expert financial enquiry, into the re-allocation 'for example, of the resources of India between the Centre and the Provinces'. Thus 'before the Orders in Council designed to put provincial autonomy in force were submitted to Parliament, ... Parliament would be provided with all the information on the financial situation which the Government had obtained'.‡

The cost connected with the setting up of provincial autonomy has been calculated at from 6 to 8 crores by Sir Malcolm Hailey. Of this Rs. 3 to 4 crores would be involved if the provincial deficits were to be removed, including the provision of resources to cover

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* *Records,* Vol. III, p. 247.

† Sec. 320.

‡ The Marquess of Zetland, before the House of Lords, 1st July, 1935, in replying to an amendment which urged the appointment of a Commission to enquire into the financial position of India (*Debates,* Vol. 97, No. 71).

Sir Otto Niemeyer has been entrusted with the task of reporting on the distribution of the share of income-tax, jute export duty and subvention to Provinces, and also on the general financial outlook.

deficits that would otherwise arise in the areas of the new provinces of Sind and Orissa, about ¾ crore is needed for the overhead expenses of setting up the new provincial machinery ; and about 2 crores would be involved in the separation of Burma from India.*

Eleven Governors' Provinces

Sec. 40

The existing Governors' Provinces are the Presidencies of Bengal, Madras and Bombay, and the Provinces known as the United Provinces, the Punjab, Bihar & Orissa, the Central Provinces, Assam, the North-West Frontier Province, and Burma. The Government of Burma Act, 1935 (originally Part XIV of the India Act) covering 158 clauses provides for a separate constitution for Burma, which shall cease to be a part of India. There shall besides be a new Province of Sind and a new Province of Orissa, the former carved out of the Presidency of Bombay, and the latter mainly out of the Province now known as Bihar and Orissa, but also including a portion of what is now Madras territory, and a very small area from the Central Provinces. His Majesty may by an Order in Council create a new Province, increase, or diminish or alter the area of any Province, after ascertaining the views of the Federal Legislature and the views of the Government and the Chamber or Chambers of the Legislature of any Province which will be affected by the Order.†

Provisions as to New Provinces

Secs. 289 & 290

The following shall be the Chief Commissioners' Provinces, that is to say, the heretofore existing Chief

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* Statement by Sir Samuel Hoare to the Joint Parliamentary Committee (6 July, 1935), (*Records*, 1 and 2, Vol. III.)

Readjustment of Provincial boundaries

† On this point Mr. C. R. Attlee's draft urged that even with the creation of these new provinces there is a strong case for a reconsideration of Provincial boundaries, and sought to recommend that the Indian Legislature should as soon as

Commissioners' Provinces of British Baluchistan, Delhi, Ajmer-Merwara, Coorg and the Andaman and Nicobar Islands, the area known as Panth Piploda, and such other Chief Commissioners' Provinces as may be created under the Act. Aden shall cease to be part of India. **Chief Commissioners' Provinces**

A Chief Commissioner's Province shall be administered by the Governor-General acting, to such extent as he thinks fit, through a Chief Commissioner to be appointed by him in his discretion. **Sec. 94**

For British Beluchistan special provisions are made with regard to the applicability of Federal laws, and the promulgation of Regulations by the Governor-General. The existing arrangements regarding Coorg and its Legislative Council are to continue, until other provision is made by His Majesty in Council. **Secs. 94 & 95**

A. The Provincial Executive

The executive authority of a Province shall be exercised on behalf of His Majesty by the Governor, either directly or through officers subordinate to him. He will be appointed by His Majesty by a Commission under the Royal Sign Manual, and, as the Joint Parliamentary Committee Report emphasises, "the Ministers **The Governor** **Sec. 49** **Sec. 48**

possible after the coming into force of the new Constitution set up a Boundaries Commission to delimit the extent of the Provinces and to decide if some should, for greater facility in working, be divided. "Generally speaking, we consider," the draft continued, "that the Provinces, however suitable as administrative units under an autocracy, are in many cases, too large for the efficient working of democratic institutions for a people at the stage of development of that of many of the inhabitants of India, although, at the same time, we recognise that a Provincial Patriotism has, in many instances, already been developed. It is therefore, in our view, essentially a matter which should be decided by the representatives of the Indian people." [*Proceedings,* Vol. I, Part II, p. 264.]

will not be concerned with the appointment of the Governor himself."*

Council of Ministers

Sec. 50

The Act provides the Governor with a Council of Ministers to "aid and advise" him in the exercise of any powers conferred on him by the Constitution Act, except in relation to such matters as will be left by that Act to the Governor's discretion.† In regard to any power or function described as being exercisable by the Governor in his discretion the Ministers have no constitutional right to tender advice, but, in regard to other matters not described as being exercisable by the Governor in his discretion, the right to advise, *i.e.* to initiate the proposals, rests with the Ministers.

Governor in his 'discretion'

The second technical term used in this connexion throughout the Bill is the phrase 'exercise his individual

*The Joint Memorandum of the British Indian Delegation observed as follows, on the class of men who should fill the office of Governors: "We strongly feel that the Governors of all the Provinces should under the new constitution be selected from amongst public men in Great Britain and in India. Members of the permanent services in India, whether retired or on active service, should be excluded from these high appointments." (J. P. C. *Records*. Vol. III, p. 223.)

The Governors of Madras, Bengal, Bombay, and U. P. shall receive an annual salary of Rs. 120,000, of Punjab and Bihar 1 lakh each, of C. P. 72,000 and of Assam, N.W.F. Province, Orissa and Sind 66,000 each. Each Governor shall besides receive some special allowances in respect of travelling, equipment, etc., and provision shall also be made for him to discharge conveniently and with dignity the duties of his office (Third Schedule).

† There will be in a few Provinces certain 'Partially Excluded' and 'Excluded Areas' (i.e., tracts where any advanced form of political organization is unsuited to the primitive character of the inhabitants), to be administered by the Governor himself. (White Paper, Proposal 66.) Also see Appendix A to this Chapter.

judgment'. This phrase which is applicable to matters within the purview of the Ministers, means that the Governor, after considering the advice of the Ministers, is free to direct such as he thinks fit, that is to say, not necessarily to accept the advice tendered to him.* This course is open to the Governor (*a*) whenever any of the special responsibilities enumerated in the Act is, in his opinion, involved, and (*b*) whenever any of the powers conferred upon him by the Act specifically require him in their exercise to exercise his individual judgment. Whenever the Governor is acting in his discretion, or exercising his individual judgment, he is subject to the control and direction of the Governor-General acting again in his discretion.†

'Individual judgment'

The Governor in his discretion may preside at meetings of the Council of Ministers. If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Act required to act in his discretion or to exercise his individual judgment, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have exercised his individual judgment.

Governor's decision final re: province of his action

The Ministers shall be chosen by the Governor in his discretion and shall hold office during his pleasure. A Minister who for any period of six consecutive months is not a member

Appointment of Ministers

* Speech by the Solicitor-General (*Debates*, House of Commons, 20 March, 1935).

† This provision gives the Governor-General powers of interference even in details. It was suggested also that besides impairing the autonomy of the provinces, the power might be utilised even for dissolving the indirectly elected Federal Assembly, in case the Governor-General was dissatisfied with it. (Speech by the Marquess of Salisbury, in the House of Lords on 3 July, 1935.)

of the Provincial Legislature shall at the expiration of that period cease to be a Minister.

Salary

Sec. 51

The salaries of Ministers shall be such as the Provincial Legislature may from time to time by Act determine, and, until the Provincial Legislature so determines, shall be determined by the Governor. It is further provided that the salary of a Minister shall not be raised during his term of office.

The relation of the Governor to the Council of Ministers is laid down in the draft* Instrument of Instructions; which contains the following :—

Selection of Ministers

"In making appointments to his Council of Ministers, our Governor shall use his best endeavours to select his Ministers in the following manner, that is to say, in consultation with the person who in his judgment is likely to command a stable majority in the Legislature to appoint those persons including, so far as practicable, members of important minority communities who will best be in a position collectively to command the confidence of the Legislature. But, in so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers.†

Governors' relations with Ministers

"In all matters within the scope of the executive authority of the Province, save in relation to functions which he is required by the said Act to exercise in his discretion, our Governor shall in the exercise of the powers conferred upon him be guided by the advice of his Ministers, unless in his opinion so to be guided would be inconsistent with the fulfilment of any of the

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*So called because the drafts have not yet been formally approved by Parliament, according to the innovation introduced in the Act.

†A motion by the Labour Party to specify in the Act that one of the Ministers shall be Prime Minister was negatived. (*Debates*, House of Commons, March 13, 1935.)

special responsibilities which are by the said Act committed to him, or with the proper discharge of any of the functions which he is otherwise by the said Act required to exercise in his individual judgment. But he shall be studious so to exercise his powers as not to enable his Ministers to rely upon his special responsibilities which are properly their own.

"In the framing of rules for the regulation of the business of the Provincial Government our Governor shall ensure that, amongst other provisions for the effective discharge of that business due provision is made that the Minister in charge of the Finance Department shall be consulted upon by any other Minister which affects the finances of the Province: and further that no reappropriation within a Grant shall be made by any Department otherwise than after consultation with the Finance Minister; and that in any case in which the Finance Minister does not concur in any such proposal the matter shall be brought for decision before the Council of Ministers."

Special provisions re: Finance Minister

It is laid down that neither the question whether any, and if so what, advice was tendered by Ministers to the Governor shall be inquired into by any court, nor shall the validity of anything done by the Governor be called in question on the ground that it was done otherwise than in accordance with any Instrument of Instructions issued to him.

Reference to Courts barred

Secs. 50 & 53

Regarding the Governor's position the Marquess of Zetland said that the Act "gives the Governor complete executive power." It was quite true, he further said that, in pursuance of the policy of setting up responsible Legislatures and Ministers, there were other provisions of the Act which laid down that, generally speaking, with certain exceptions, the Governor, in discharging his executive authority, shall act upon the advice of his Ministers. That was a clause giving statutory form to the Convention which had grown up in England. But, Lord Zetland admitted, there were certain limitations put upon the powers of the Ministers by the clause dealing with the Governor's special responsibilities. In so

Lord Zetland on the Governor's powers

far as he had a special responsibility—and one of these special responsibilities would be looking after the interests of the Services and so on—the Governor, in his Lordship's opinion, was not bound to act upon the advice of his Ministers.*

The Governor shall have the following special responsibilities :—

Governor's Special Responsibilities

Sec. 52

(*a*) the prevention of any grave menace to the peace or tranquillity of the Province or any part thereof ;

(*b*) the safeguarding of the legitimate interests of minorities ;

(*c*) the securing to, and to the dependants of, persons who are or have been members of the public services of any rights provided or preserved for them by or under the Act, and the safeguarding of their legitimate interests ;

(*d*) the securing in the sphere of executive action of the purposes which the provisions of the chapter of the Act relating to discrimination, are designed to secure in relation to legislation ;

(*e*) the securing of the peace and good government of areas which by or under the provisions of the Act are declared to be partially excluded areas ;

(*f*) the protection of the rights of any Indian State and the rights and dignity of the Ruler thereof ; and

(*g*) the securing of the execution of orders or directions lawfully issued to him under Part VI of the Act (dealing with administrative relations between the Federation and Provinces) by the Governor-General in his discretion.

The Governor of C. P. and Berar shall further have the special responsibility of securing that a reasonable share of the revenues of the Province is expended for the benefit of Berar. The Governor of Sind shall have a special responsibility for the proper administration of the Lloyd Barrage and canals scheme.

If and in so far as any special responsibility of the Governor is involved, he shall, in the exercise of his

Debates, House of Lords, July 4, 1935.

functions, exercise his individual judgment as to the action to be taken.*

The Governor of each Province shall appoint a person, being a person qualified to be appointed a judge of a High Court, to be

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*Commenting on some of these special responsibilities Mr. Cocks (Lab) said: "We have always held that social abuses can most effectively be dealt with by Indians themselves. As the result of dealing with abuses certain disorders may arise, and we think those disorders ought to be dealt with by the forces of law and order but that it would be putting a premium upon disorder to allow the Governor to exercise the power of ordering the withdrawal of a Bill. We think that two ill-effects will follow from that sort of procedure. The first effect will be to weaken the responsibility of Ministers, and the second will be to concentrate opposition upon the Governor. Both these things are extremely undesirable. With regard to paragraph (*c*), we agree that members of the public services should be secured in their legal rights, but we feel that 'the safeguarding of their legitimate interests' is rather a wide phrase. In the Instruments of Instructions the Governor is instructed to safeguard not only the legal rights of the members of the civil service but to safeguard them against any action which, in his judgment, will be inequitable. We think that that is a power which should not be placed in the hands of one person, but should be referred to the Public Services Commission for discussion and decision. Paragraph (d) refers to the question of discrimination in the sphere of executive action. In the Instruments of Instructions the Governor is required, 'to differ from his Ministers if in his individual judgment their advice would have effects of the kind which it is the purpose of the said Chapter to prevent even though the advice so tendered to him is not in conflict with any specific provision of the said Act'.

Mr. Cocks' criticism

"In other words, the advice may not be in conflict with any law, but, in spite of that, the Governor can take action. That is a wide power to be entrusted to any one person. Only an exceptional individual should be entrusted with a power such as that......In all these cases we feel that the real safeguard should be the personal influence of the Governor in his day-to-day contact with the ministers." (*Debates*, House of Commons, 20 March, 1935).

Advocate-General for Province

Sec. 55

Advocate-General for the Province. It shall be the duty of the Advocate-General to give advice to the Provincial Government upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor. The Advocate-General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine. In exercising his powers with respect to the appointment and dismissal of the Advocate-General and with respect to the determination of his remuneration, the Governor shall exercise his individual judgment.* The Advocate-General shall also have the right of addressing the Provincial Legislature.

Governor's Secretarial staff

Sec. 308

Provision is also made for the appointment of a special secretarial staff by the Governor, 'in his discretion'. Sir Samuel Hoare explained while introducing this 'new clause' that no Minister shall be entitled to give an order to any such official. The section secures the service as Secretary of "a man with considerable experience in the Presidency" to a Governor fresh from Great Britain, and also "makes it possible to the Governor to attach to himself a subordinate secretarial staff in order that he may have efficient advice."†

Governor's powers re: crimes of violence

Sec. 57

Though there will be no reserved subject, special powers are given to the Governor regarding crimes of violence intended to overthrow Government. The powers given to the Governors under this section, are powers which

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*The Solicitor-General explained, that as the function of the Advocate-General is to advise the Provincial Government, 'it would be wrong if Ministers had no *locus standi* in suggesting to the Governor a name for his consideration'. (*Debates*, House of Commons, 20 March, 1935.)

† *Debates* : House of Commons, 23 May, 1935.

are over and above their special responsibility for the prevention of any grave menace to peace and tranquillity. These powers are conferred, according to the Report of the Joint Committee, in order to ensure that the measures taken to deal with terrorism and other activities of revolutionary conspirators should not be less efficient and unhesitating under the Act than they have been in the past.

Appointment of Official Minister

If any Governor decides to exercise such powers, he is further authorised, at his own discretion, to appoint an official as a temporary member of the Legislature to act as his mouthpiece in that body, and any official so appointed has the same powers and rights, other than the power to vote, as an elected member.*

Sources of certain information not to be disclosed

In order to check terrorism, it is further provided that the Governor, in his discretion, shall make rules for securing that no records or information relating to the intelligence service dealing with terrorism shall be disclosed to any one other than such persons within the Provincial Police Force as the Inspector-General or the Commissioner of Police may direct, or such other public officers outside that Force as the Governor himself may direct. **Sec. 58**

*Mr. Attlee objected to this provision of an Official Minister. He said "We believe that these crimes of violence, this terrorism and conspiracy, can only be dealt with by Indian ministers themselves. It seems to me that the responsibility should be placed on Indian ministers and on the Legislature. If it be found that the Legislature and the Ministers are unwilling to take the responsibility, we think it is better to have a clean cut and to say that the parliamentary system has broken down. If there be any necessity for explaining things, let the Governor do it himself; let him say that things have broken down; but do not try to carry on a kind of sham half-and-half parliamentary system." (*Debates*, House of Commons, 22 March, 1935.)

Rules for the business of Provincial Government

Sec. 59

In consultation with his Ministers, the Governor shall make rules for the more convenient transaction of the business of the Provincial Government, and for the allocation among Ministers of the said business with respect to which the Governor is by or under the Act required to act in his discretion.

Duty of Ministers and Secretaries to inform Governor

The rules shall include provisions requiring ministers and secretaries to Government to transmit to the Governor all such information with respect to the business of the Provincial Government as may be specified in the rules, or as the Governor may otherwise require to be so transmitted, and in particular requiring a Minister to bring to the notice of the Governor, and the appropriate secretary to bring to the notice of the Minister concerned and of the Governor, any matter under consideration by him which involves, or appears to him likely to involve, any special responsibility of the Governor.*

*Urging on behalf of the Labour opposition that the Secretaries to the Government be not directed to bring anything to the notice of the Governor, Mr. Attlee observed: "This clause was devised in the Joint Select Committee in order that the Governor should be fully informed of every thing so that he might be able to exercise his special responsibilities. In this Clause the responsibility of keeping the Governor informed is laid on both ministers and secretaries. The effect of that is that the secretaries are turned, as it were, into the watch-dogs of the ministers. It is an example of lack of confidence in the ministers."

The Under-Secretary of State gave the assurance that "It will be no different from the ordinary way of business within a Government department when, for instance, a secretary responsible for a particular branch of the administration marks the name of the Governor on a particular file

Regarding the Provincial Executive, Sir Abdur Rahim (now President of the Indian Legislative Assembly) expressed the opinion before the Joint Committee, that the special responsibilities and special powers of the Governor would make it extremely difficult for responsible Governments in the Provinces to function. In his view, the provision made to meet cases of breakdown of the Constitution should suffice to meet all serious contingencies. He was convinced that if the rights and interests of the Minorities and the services were properly defined in the Constitution Act itself, that will afford more effective protection to them.* **Sir Abdur Rahim on the special powers of Governor**

B. PROVINCIAL LEGISLATURES

In each Governor's Province there shall be a Provincial Legislature consisting of the King, represented by the Governor, and a Legislative Assembly. In six Provinces, namely Bengal, United Provinces, Madras, Bombay, Bihar and Assam, it is proposed that there shall be a Legislative Council as well as a Legislative Assembly. **Bi-cameral Legislature in six Provinces**

Every Legislative Assembly of every Province unless sooner dissolved, shall continue for five years from the date appointed for their first meeting and no longer, and the expiration of the said period of five years shall operate as a dissolution of the Assembly. These Assemblies shall be the constituencies for the election of the British Indian representatives to the Federal Assembly. **Composition of Chambers** **Sec. 61**

Every Legislative Council shall be a permanent body not subject to dissolution, but as

to which the Governor should pay attention. We have no intention of going behind the Minister's back in this particular matter." (*Debates*: House of Commons, 22 March, 1935.)

* *Records*, Vol. III, p. 219.

near as may be one-third of the members thereof shall retire in every third year, in accordance with the provision in that behalf made in relation to the Province under the Fifth Schedule.

Power of abolition of Council

Sec. 308

The White Paper proposed Second Chambers for Bengal, United Provinces and Bihar only. The Joint Committee recommended the creation of Second Chambers for Bombay and Madras, and Assam was added to the list by Parliament. According to the White Paper proposal, after a period of ten years, a bicameral Legislature might abolish its Legislative Council, and a unicameral Legislature might present an address to the Crown praying for the establishment of a Legislative Council. The Joint Committee, on the other hand, recommended that the Provincial Legislatures need not be given the power of abolition or creation of a Legislative Council but shall have a special right to present an address to the Governor for submission to His Majesty and to Parliament.

Opposition to Second Chambers

The opposition in India to the creation of Second Chambers for the Provinces was reflected in the debates in Parliament. Lord Faringdon, for instance, moving for single Chambers for Provinces urged in the House of Lords that that would be an additional expense and as the Provincial Assemblies shall have 'a very limited franchise, also a special representation for commercial, conservative and reactionary classes,' he did not find that 'Second Chambers can possibly be needed to curb their turbulent revolutionaryism.' Moreover, in his opinion, no Second Chamber was necessary to act as a "steadying influence," nor could it act as such in view of the 'immense lack of men in India with extensive political experience' to serve there. Lord Strabolgi submitted that in addition to the objections to putting more checks and safeguards as represented by this Second Chamber, there was the fact that India to-day was not in need of cautions policies but very bold policies indeed. He added : "The out-of-date system of land tenure, the poverty, the terrible poverty, of the masses on the land and in the industrialised cities, some of the caste customs, which literally check ordinary material progress—these things need abolishing, and

abolishing quickly, and radically, and bodily, and the last things which I submit you want in India are constitutional checks and additional means of preventing the rapid reorganisation and replanning of the whole economic system in India."*

Sir Tej Bahadur's opinion

Sir Tej Bahadur Sapru in his Memorandum to the Joint Committee referred to the relevant portions of the Report of the Simon Commission and the Government of India's Despatch on that Report, to show that the establishment of Second Chambers was not urged by either. He also pointed out that evidence before the Joint Committee revealed that opinion expressed by some of the local Councils was not regarded as representative of public opinion. He added: "It is perfectly true that wherever there are important zemindars there is a demand for the establishment of a Second Chamber, but this demand is not endorsed by general public opinion. I personally have grave doubts as to whether Second Chambers by themselves can effectively protect the interests of the zemindars or otherwise conservative classes. I am also more than doubtful as to whether constituted as the zemindar class at present is, it can supply a sufficient number of men who can effectively discharge the functions of the members of an Upper Chamber as in other countries. Nor do I feel so confident as Sir Malcolm Hailey seemed to be that it would be possible to secure the right type of men from among commercial magnates or retired members of the Judiciary. If the Second Chamber's legitimate function is going to be that of a revising body, then I do not expect any such results to follow from them in the Provinces of India. On the other hand, if they are to function merely as brakes upon hasty and ill-considered legislation passed by the Lower Chambers, one ought not to overlook the danger—by no means imaginary—that the Second Chambers may, and probably will effectively block all social legislation of a progressive character, and thus come into conflict with the popular Lower House and the general public opinion. There is also the question of a greater strain being placed on

* *Debates*, House of Lords, 3 July, 1935.

the provincial purse by the establishment of a Second Chamber, and we ought not to overlook it."*

I

Sessions of the Legislature

Sec. 62

The Chamber or Chambers of each Provincial Legislature shall be summoned to meet once at least every year, and twelve months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session.

Subject to the provisions of this section, the Governor may in his discretion from time to time—

(*a*) summon the Chambers or either Chamber to meet at such time and place as he thinks fit;

(*b*) prorogue the Chamber or Chambers;

(*c*) dissolve the Legislative Assembly.

Right of Governor to address and send messages

Sec. 63

The Governor may in his discretion address the Legislative Assembly or, in the case of a Province having a Legislative Council, either Chamber of the Provincial Legislature or both Chambers assembled together, and may for that purpose require the attendance of members. He may similarly send messages to the Chamber or Chambers of the Provincial Legislature, whether with respect to a Bill then pending in the Legislature or otherwise, and a Chamber to whom any message is so sent shall with all convenient dispatch consider any matter which they are required by the message to take into consideration.

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* *Records*, Vol. III, pp. 278-79; also *British Indian Delegation's Memorandum*, p. 220.

Every minister and the Advocate-General* shall have the right to speak in, and otherwise take part in the proceedings of, the Legislative Assembly of the Province or in the case of a Province having a Legislative Council, both Chambers and any joint sitting of the Chambers, and to speak in, and otherwise take part in the proceedings of, any committee of the Legislature of which he may be named a member, but shall not, by virtue of this provision, be entitled to vote.

Participation of Ministers & Advocate-General in discussion in Legislature

Sec. 64

Provision is also made for the election of a Speaker and Deputy Speaker by every provincial Assembly and a President and Deputy President for every Council by the members of these bodies. Their salaries are to be fixed by the Provincial Legislature. The Speaker or President or person acting as such shall only exercise a casting vote in case of an equality of votes.

Officers of Chambers

Sec. 65

Quorum

Sec. 66

* The House of Lords is responsible for investing the Advocate-General with this right. Mr. Butler in commending the amendment to the Commons urged that "it was often wise that the executive should express its view of a matter at an early stage and that a plain, clear statement at an early state might in certain cases avert the possibility of danger and disaster later". Mr. Morgan Jones objected to the change as it was likely to bring the King's representative in India into contact with the controversies of the Assembly in this way. He added: "I cannot quite see what case there can be for sending down a person of that sort, who acts in the capacity of a judge, who has the qualities of a judge, who gives advice strictly on legal matters, and who is not therefore what we might regard as a day-to-day politician at all, to the House of Commons to take part in the discussions there. I cannot imagine anything more irritating and annoying to the Indian people than to have persons sent down in this way periodically to participate in their discussions." (*Debates*, House of Commons, 30 July, 1935.)

The quorum for the Assembly is fixed at one-sixth of the total number of members, and for the Council to ten members only.

Vacation of Seats

Sec. 68

It is provided that no person shall be a member both of the Federal Legislature and of a Provincial Legislature. If for sixty days a member of a Chamber is without permission of the Chamber absent from all meetings thereof, the Chamber may declare his seat vacant : provided that in computing the said period of sixty days no account shall be taken of any period during which the Chamber is prorogued, or is adjourned for more than four consecutive days.

Privileges of Members

Sec. 71

The Act defines the privileges of members. It is laid down that there shall be freedom of speech in every Provincial Legislature, and no member of the Legislature shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a Chamber of such a Legislature of any report, paper, votes or proceedings.

In other respects the privileges of members of a Chamber of a Provincial Legislature shall be such as may from time to time be defined by Act of the Provincial Legislature and, until so defined, shall be such as were immediately before the commencement of Provincial autonomy enjoyed by members of the Legislative Council of the Province. The legislature, however, shall not have the power of a court, and hence shall not have any jurisdiction to conduct an impeachment, nor commit any person for contempt. The legislature shall have the power to remove or exclude persons infringing the rules or standing orders, or otherwise behaving in a disorderly manner.

Provision may be made by an Act of the Provincial Legislature for the punishment, on conviction before a

court, of persons who refuse to give evidence or produce documents before a committee of a Chamber when duly required by the chairman of a committee to do so.

Restrictions on discussion

Two important restrictions are placed on discussion in the Legislature. First, no discussion shall take place in a Provincial Legislature with respect to the conduct of any judge of the Federal Court or of a High Court in the discharge of his duties. Secondly, if the Governor in his discretion certifies that the discussion of a Bill introduced or proposed to be introduced in the Provincial Legislature, or of any specified clause of a Bill, or of any amendment moved or proposed to be moved to a Bill, would affect the discharge of his special responsibility for the prevention of any grave menace to the peace or tranquillity of the Province or any part thereof, he may in his discretion direct that no proceedings, or no further proceedings, shall be taken in relation to the Bill, clause or amendment, and effect shall be given to the direction.* Sec 86

Rules of procedure

* Moreover regarding the framing of rules of procedure by a Chamber of Provincial legislature it is laid down that as regards either a Legislative Assembly or a Legislative Council, the Governor shall in his discretion, after consultation with the Speaker or the President, as the case may be, make rules— Sec. 84

(*a*) for regulating the procedure of, and the conduct of business in, the Chamber in relation to any matter which affects the discharge of his functions in so far as he is by or under this Act required to act in his discretion or to exercise his individual judgment;

(*b*) for securing the timely completion of financial business;

(*c*) for prohibiting the discussion of, or the asking of question on, any matter connected with any Indian State unless the Governor in his discretion is satisfied that the matter affects the interests of the Provincial Government or a British subject ordinarily resident in the Province, and has given his consent to the matter being discussed, or to the question being asked;

A schedule to the Act on the composition of Provincial Legislatures* specifies the general qualification for membership and the allocation of seats in the Provincial Legislatures. The delimitation of provincial and also federal (British Indian) constituencies was entrusted to a Committee presided over by Sir Laurie Hammond, a former Governor of Assam.†

The schedule, mentioned above, lays down that a person shall not be qualified to be chosen

(*d*) for prohibiting, save with the consent of the Governor in his discretion—

(*i*) the discussion of or the asking of question on any matter connected with relations between His Majesty or the Governor-General and any foreign State or Prince, or

(*ii*) the discussion, except in relation to estimates of expenditure of, or the asking of questions on any matters connected with the tribal areas or arising out of or affecting the administration of an excluded area; or

(*iii*) the discussion of, or the asking of questions on, the personal conduct of the Ruler of any Indian State or of a member of the ruling family thereof;

and, if and in so far as any rule so made by the Governor is inconsistent with any rule made by a Chamber, the rule made by the Governor shall prevail.

* Fifth Schedule (Sec. 61).

† Provisional schemes prepared earlier by Provincial Committees consisting of members of the Councils were placed before the Committee. These schemes have been modified by the Committee on the basis of the Memoranda and evidence before them. The decision of the authorities on the details is to be made known by means of an Order in Council. The Committee worked for four months and signed their report on January 23, 1935. Sir Laurie Hammond also conducted a separate enquiry into the problem of the delimitation of constituencies in Burma.

Vide Appendix I, at the end of the book, for a summary of the principal recommendations of the Committee.

to fill a seat in a Provincial Legislature unless he—

(*a*) is a British subject or the Ruler or a subject of an Indian State which has acceded to the Federation or, if it is so prescribed with respect to any Province, the Ruler or a subject of any prescribed Indian State; and **Qualifications of Members**

(*b*) is, in the case of a seat in a Legislative Assembly, not less than twenty-five years of age, and in the case of a seat in a Legislative Council, not less than thirty years of age; and

(*c*) possesses the requisite communal and property qualifications.* Members will be **Oath**

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* A person is to be disqualified for being chosen as, and for being, a member of either Chamber—

(*a*) if he holds any office of profit under the Crown in India other than an office declared by Act of the provincial Legislature not to disqualify its holder:

(*b*) if he is of unsound mind and stands so declared by a competent court;

(*c*) if he is an undischarged insolvent;

(*d*) if, whether before or after the establishment of Provincial Autonomy, he has been convicted, or has, in proceedings for questioning the validity or regularity of an election, been found to have been guilty of any offence or corrupt or illegal practice relating to elections which has been declared by Order in Council or by an Act of the Provincial Legislature to be an offence or practice entailing disqualification for membership of the Legislature, unless such period has elapsed as may be specified in that behalf in the provisions of that Order or Act; **Disqualifications** **Sec. 69**

(*e*) if, whether before or after the establishment of the Provincial Autonomy, he has been convicted of any other offence by a court in British India or in a State which is a Federated State and sentenced to transportation or to imprisonment for not less than two years, unless a period of five years, or such less period as the Governor, acting in his discretion, may allow in any particular case, has elapsed since his release;

Sec. 67 required to take an oath in one of the appropriate forms set out in the Fourth Schedule.

Allowances of Members

Sec. 72

Until the Provincial legislatures fix any other scale, members of the Provincial Legislative Assemblies and Councils shall be entitled to receive allowances at such rates and upon such conditions as were immediately before the commencement of Provincial autonomy applicable in the case of members of the Legislative Council of the Province.

Courts excluded from enquiring into proceedings

Sec. 87

The validity of any proceedings in a Provincial Legislature shall not be called in question on the ground of any alleged irregularity of procedure.

(*f*) if, having been nominated as a candidate for the Federal or any Provincial Legislature or having acted as an election agent of any person so nominated, he has failed to lodge a return of election expenses within the time and in the manner required by any Order in Council made under the Act or by any Act of the Federal or the Provincial Legislature, unless five years have elapsed from the date by which the return ought to have been lodged, or the Governor, acting in his discretion, has removed the disqualification. Such disqualification, however, is not to take effect until the expiration of one month from the date by which the return ought to have been lodged or of such longer period as the Governor, acting in his discretion, may in any particular case allow.

In addition, a person is not to be capable of being chosen a member of either Chamber while he is serving a sentence of transportation or of imprisonment for a criminal offence.

But, a person is not to be deemed to hold an office of profit under the Crown in India by reason only that he is a Minister either for the Federation or for a Province.

Sec. 70 A penalty of 500 rupees for each day is imposed upon any person who sits or votes as a member of either Chamber when he is not qualified, or when disqualified.

All proceedings in the Legislature of a Province shall be conducted in the English language; but the rules shall provide for enabling persons unacquainted, or not sufficiently acquainted, with the English language to use another language.

Language of proceedings

Sec. 85

II

Regarding legislative procedure detailed provisions are incorporated in the Act, divided into three groups viz., (1) ordinary legislation, (2) procedure in financial matters; and (3) the legislative powers of the Governor.

Three classes of legislation

Bills, other than financial Bills, may originate in either Chamber of the Legislature of a Province which has a Legislative Council. A Bill pending in the Legislature of a Province shall not lapse by reason of the prorogation of the Chamber or Chambers thereof. A Bill pending in the Legislative Council of a Province which has not been passed by the Legislative Assembly shall not lapse on a dissolution of the Assembly.

Ordinary legislative procedure

Introduction of Bills

Sec. 73

A Bill which is pending in the Legislative Assembly of a Province, or which having been passed by the Legislative Assembly is pending in the Legislative Council, shall lapse on a dissolution of the Assembly.

A Bill shall not be deemed to have been passed by the Chambers of the Legislature of a Province having a Legislative Council, unless it has been agreed to by both Chambers, either without amendments or with such amendments only as are agreed to by both Chambers. If a Bill which has been passed by the Legislative

Passing of Bills

Sec. 74

Assembly and transmitted to the Legislative Council is not, before the expiration of twelve months from its reception by the Council, presented to the Governor for his assent, the Governor may summon the Chambers to meet in a joint sitting for the purpose of deliberating and voting on the Bill. But, if it appears to the Governor that the Bill relates to finance or affects the discharge of any of his special responsibilities, he may summon the Chambers to meet in a joint sitting for the purpose aforesaid notwithstanding that the said period of twelve months has not elapsed, in his discretion.

Joint sitting of Chambers

If at a joint sitting of the two Chambers summoned in accordance with the provisions of the Act, a Bill with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Chambers present and voting, it shall be deemed for the purposes of the Act to have been passed by both Chambers.

It is, however, provided that at a joint sitting, unless the Bill has been passed by the Legislative Council with amendments and returned to the Legislative Assembly, no amendment shall be proposed to the Bill other than such amendments, if any, as are made necessary by the delay in the passage of the Bill. If the Bill has been so passed and returned by the Legislative Council, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Chambers have not agreed, and the decision of the person presiding as to the amendments which are admissible under this provision shall be final.

President at joint sitting

Sec. 84

At a joint sitting of two Chambers the President of the Legislative Council, or in his absence such person as may be determined by rules of procedure shall preside.

A Bill which has been passed by the Provincial Legislative Assembly or, in the case of a Province having a Legislative Council, has been passed by both Chambers of the Provincial Legislature, is to be presented to the Governor, and the Governor in such cases is empowered in his discretion to declare either that he assents in His Majesty's name to the Bill, or that he withholds assent, or that he reserves the Bill for the consideration of the Governor-General. When a Bill is so reserved for the consideration of the Governor-General, he may either assent in His Majesty's name to the Bill, or withhold assent, or himself reserve the Bill for the signification of His Majesty's pleasure.

Assent to Bills by Governor

Sec. 75

By Governor-General

Sec. 76

Paragraph XVIII of the draft Instrument of Instructions to the Governor lays down that the Governor "shall not assent in Our name to, but shall reserve for the consideration of Our Governor-General, any Bill of any of the classes herein specified, that is to say:—

Instructions re: assent to Bills

(*a*) any Bill the provisions of which would repeal or be repugnant to the provisions of any Act of Parliament extending to British India;

(*b*) any Bill which in his opinion would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by the said Act designed to fill;

(*c*) any Bill which would alter the character of the Permanent Settlement ;*

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* With regard to the compulsory acquisition of land it is laid down : "No person shall be deprived of his property in British India save by authority of law. Neither the Federal nor a Provincial Legislature shall have power to make any law authorising the compulsory acquisition for public purposes of any land, or any commercial or industrial undertaking, or any interest in, or in any company owning, any commercial or industrial undertaking, unless the law provides for the payment of compensation for the property acquired and either fixes the

Compulsory acquisition of land

Sec. 299

(*d*) any Bill regarding which he feels doubt whether it does, or does not, offend against the purposes of the provisions with respect to Discrimination. Such Bills are again required to be reserved for the signification of His Majesty by the Governor-General, according to paragraph XXVII of the draft of the latter's Instrument of Instructions. Even when an Act has received the assent of the Governor or the Governor-General it may be disallowed by His Majesty within

amount of the compensation, or specifies the principles on which, and the manner in which, it is to be determined. No Bill or amendment making provision for the transference to public ownership of any land or for the extinguishment or modification of rights therein, including rights or privileges in respect of land revenue, shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion, or, in a Chamber of a Provincial Legislature without the previous sanction of the Governor in his discretion."

The Permanent Settlement

Mr. F. S. Cocks wanted to insert during the discussion of this section the following words: "Provided that in the case of a Bill or amendment making provision for the extinguishment or modification of the rights of Zamindars and others who are the successors in interest of those in whose favour the permanent settlement of Bengal, Bihar, and Orissa and part of the United Provinces and Madras was made at the end of the eighteenth century, the previous sanction of the Governor-General or the Governor shall not be required, but the Bill or amendment, before enactment, shall be reserved by the Governor-General or the Governor, as the case may be, for the signification of His Majesty's pleasure". Mr. Cocks quoted extensively from the Joint Parliamentary Committee's Report to show that the position of zamindars under the permanent settlement was different from others of the same class. The Report states: "The alteration of the

Joint Committee on changes affecting the Settlement

character of the land revenue settlement in Bengal, for instance, would involve directly or indirectly the interests of vast numbers of the population, in addition to those of the comparatively small number of zamindars proper, and might indeed produce an economic revolution of a most far-reaching character. Consequently, no Ministry or Legislature in Bengal could, in fact, embark upon, or at all events carry to a con-

twelve months from the date of such assent ; and when any Act is so disallowed the Governor is to make the fact known by public notification. The Marquess of Zetland pointed out in the House of Lords (July 3, 1935), that this power to disallow Acts did not mean that an Act was not to come into force until the expiration of the twelve months within which the veto could be used. If the Act is so disallowed it will be void from the date when the fact is made known by public notification.

Veto by Crown

Sec. 77

III

Principle of public finance

The principle with regard to financial procedure followed in the Act is that no proposal for the imposition of taxation or for the appropriation of public revenues, nor any proposal

clusion, legislative proposals which would have such results, unless they had behind them an overwhelming volume of public support. We do not dispute the fact that the declarations as to the permanence of the settlement, contained in the Regulations under which it was enacted, could not have been departed from by the British Government so long as that Government was in effective control of land revenue. But we could not regard this fact as involving the conclusion that it must be placed beyond the legal competence of an Indian Ministry responsible to an Indian Legislature, which is to be charged inter alia with the duty of regulating the land revenue system of the Province, to alter the enactments embodying the permanent settlement, which enactments, despite the promises of permanence which they contain, are legally subject (like any other Indian enactment) to repeal or alteration. Nevertheless, we feel that the permanent settlement is not a matter for which as the result of the introduction of Provincial Autonomy, His Majesty's Government can properly disclaim all responsibility. We recommend therefore that the Governor should be instructed to reserve for the signification of His Majesty's pleasure any Bill passed by the Legislature which would alter the character of the permanent settlement".

Mr. Butler, in replying, observed that the Joint Committee's recommendations will be duly implemented in the Instrument

affecting or imposing any charge upon those revenues, can be made without the recommendation of the Governor. Apart from this, legislative procedure in matters of finance will continue to differ in India in certain respects from that which is followed in the United Kingdom. For instance, there is no annual Appropriation Act in India and a resolution of the Legislature approving a Demand for Grant is sufficient legal warrant for the appropriation.

The Budget

Sec. 78

The Provincial annual financial statement is to show separately—(*a*) the sums required to meet expenditure charged upon the revenues of the Province; and (*b*) the sums required to meet other expenditure proposed to be made from the revenues of the Province. The estimate is to indicate further, the sums, if any, which are included solely under the Governor's direction as being necessary for the due discharge of any of his special responsibilities.

Non-votable charges

The following expenditure will constitute non-votable charges upon the revenues of the Province—

(*a*) the salary and allowances of the Governor and other expenditure relating to his office for which provision is required to be made by Order in Council ;

(*b*) debt charges for which the Province is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt ;

(*c*) the salaries and allowances of Ministers, and of the Advocate-General ;

(*d*) expenditure in respect of the salaries and allowances of judges of any High Court ;

of Instructions, and, if necessary, it would 'ensure that the previous sanction required under the section shall never be withheld in such case'. (*Debates*, House of Commons, May 28, 1935.)

(*e*) expenditure connected with the administration of any areas which are for the time being excluded areas ;
(*f*) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal ;
(*g*) any other expenditure, declared by the Act or any Act of the Provincial Legislature to be so charged.

Such estimates, other than those relating to the salary and allowances of the Governor and the expenditure relating to his office, can, however, be discussed.

Budget procedure

Sec. 79

So much of the said estimates as relate to other expenditure shall be submitted, in the form of demands for grants, to the Legislative Assembly, and the Legislative Assembly shall have power to assent, or to refuse to assent, to any demand, or to assent to a demand subject to a reduction of the amount specified therein. No demand for a grant shall be made except on the recommendation of the Governor.

Financial matters requiring Governor's recommendation for discussion

Sec. 82

A Bill which, if enacted and brought into operation, would involve expenditure from the revenues of a Province shall not be passed by a Chamber of the Legislature unless the Governor has recommended to that Chamber the consideration of the Bill. Nor shall a Bill or amendment be introduced, unless recommended by the Governor, which seeks to provide—

(*a*) for imposing or increasing any tax ; or
(*b*) for regulating the borrowing of money or the giving of any guarantee by the Province, or for amending the law with respect to any financial obligations undertaken or to be undertaken by the Province ; or
(*c*) for declaring any expenditure to be expenditure charged on the revenues of the Province, or for increasing the amount of any such expenditure.

The Governor's power to include in the schedule of authorised expenditure any addi-

Governor's ultimate powers re: finance

tional sum ncessary to secure the due discharge of his special responsibilities, is only to be exercised after a demand has been made and the Legislature has either refused it or has assented subject to reduction.*

Sec. 80

IV

Legislative powers of Governor

In discussing the special powers of the Governor, the Joint Committee express the opinion that 'purely executive action may not always suffice for the due discharge of the Governor's special responsibilities, in some circumstances it may be essential that further powers should be at his disposal'. They note that one difference between the existing procedure of certification by the Governor and that which is now proposed is that in the former case a certified Bill is deemed to be an Act of the Legislature, whereas in the latter it is declared to be (what indeed it is) a Governor's Act.

Governor's Acts

Sec. 90

"We agree," the Committee state, "that, in addition to the power of issuing emergency ordinances to which we refer later the Governor should have this reserve power of legislation. We agree also with the proposed change in nomenclature, since we can see no

Education of Europeans and Anglo-Indians

* Special provision is made for securing the continuance of Government grants-in-aid for the education of the Anglo-Indian and European communities. The amounts of the grants are not to be less in amount than the average of the grants made in the ten financial years ending on 31st March, 1933. Under a proviso to the section, power is given for a proportional reduction in these grants when the total education grant for the Province is below the average for the same ten years.

Sec. 83

possible advantage in describing an Act as the Act of the Legislature when the Legislature has declined to enact it. But we go further. We agree with the members of the British-India Delegation in thinking it undesirable that the Governor should be required to submit a proposed Governor's Act to the Legislature before enacting it. We do not, indeed, share the fear, which we understand the British India Delegates to entertain, that the Governor might use this procedure for the purpose of seeking support in the Legislature against his Ministers. Our objection rather is that the proposed procedure will be a useless formality in the only circumstances in which a Governor's Act could reasonably be contemplated. If the obstacle to any legislation which the Governor thinks necessary to the discharge of his special responsibilities lies, not in the unwillingness of the Legislature to pass it, but in the unwillingness of his Ministers to sponsor it, his remedy lies, not in a Governor's Act, but in a change of Ministry. If, on the other hand, the obstacle lies in the unwillingness of the Legislature, there can clearly be no point in submitting the proposed legislation to it, and to do so might merely exacerbate political feeling. Since, however, there may be intermediate cases where an opportunity may usefully be given to the Legislature for revising a hasty or unconsidered decision previously made or threatened, we think that the Governor should have the power (which we presume he would, in any case, possess) to notify the Legislature by Message of his intention at the expiration of, say, one month, to enact a Governor's Act, the terms of which would be set out in the Message."

Previous notice to Legislature

Sec. 90

Concurrence of Governor-General

The Joint Committee further recommended an addition to the White Paper proposals that all Governor's Acts should be laid before Parliament and that the Governor before legislating or notifying his intention to legislate should have the concurrence of the Governor-General. These provisions have been incorporated in the sections dealing with the power of the Governor in certain circumstances to enact Acts.

V

Two kinds of Ordinance

An ordinance assumes the existence of an emergency, and this might arise in connection with any branch of the administration, whether the Governor's special responsibilities were involved or not. The White Paper proposed that the Governor shall have power to make ordinances for the good government of the Province at any time when the Legislature is not in session, if his Ministers are satisfied that an emergency exists which renders such a course necessary.* There are thus two kinds of ordinance contemplated, the first made on the Governor's own responsibility and in the discharge of his special responsibilities, the second on the advice of Ministers and therefore necessarily in a sphere in which the Governor will be guided by their advice. In the latter circumstance, the Governor has been given the power to promulgate ordinances during recess of the legislature, 'if he is satisfied that circumstances exist which render it necessary for him to take immediate action'. But every such ordinance—
(*a*) shall be laid before the Provincial Legislature

Ordinance during recess of Legislature

Sec. 88

* It has been suggested that power is being given to the Governor of a Province to do only what is also done in Great Britain in case of emergency. But, when a Government in Britain promulgates anything like an ordinance, Parliament can question the Government on their action, but nothing of the kind can take place in India. The Governor is a permanent official who is not at the recall of the legislature of the Province but at the recall of the Government of Britain. The parallel therefore does not hold good.

and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature, or, if a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any, upon the passing of the resolution or, as the case may be, on the resolution being agreed to by the Council;

(*b*) shall be subject to provisions of the Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Provincial Legislature assented to by the Governor; and

(*c*) may be withdrawn at any time by the Governor.

Governor's power to promulgate ordinances at any time, with respect to certain subjects

Sec. 89

With respect to certain subjects, regarding which the Governor is required to act in his discretion or to exercise his individual judgment, he can, however, promulgate ordinances at any time. Such an ordinance shall continue in operation for a period not exceeding six months as may be specified therein, but may by a subsequent ordinance be extended for a further period not exceeding six months.

But every such ordinance—

(*a*) shall be subject to the provisions of the Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Provincial Legislature ;

(*b*) may be withdrawn at any time by the Governor ; and

(*c*) if it is an ordinance extending a previous ordinance for a further period, shall be communicated forthwith through the Governor-General to the Secretary of State and shall be laid by him before each House of Parliament.

The functions of the Governor under the section shall be exercised by him in his discretion but he shall not exercise any of his powers thereunder except

with the concurrence of the Governor-General in his discretion. But if it appears to the Governor that it is impracticable to obtain in time the concurrence of the Governor-General, he may promulgate an ordinance without the concurrence of the Governor-General, but in that case the Governor-General in his discretion may direct the Governor to withdraw the ordinance and the ordinance shall be withdrawn accordingly.*

VI

Failure of constitutional machinery

Sec. 93

In the case of failure of the constitutional machinery at any time when the Government of a Province cannot be carried on in accordance with the provisions of the Act, the Governor may by Proclamation—

(*a*) declare that his functions shall, to such extent as may be specified in the Proclamation, be exercised by him in his discretion ;

(*b*) assume to himself all or any of the powers vested in or exercisable by any Provincial body or authority.

Any such Proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effect to the objects of the Proclamation including provisions for suspending in whole or in part the operation of any provisions of the Act relating to any Provincial body or authority.

* At the present time, this power is only exercisable, whether for a single Province or for the whole of British India, by the Governor-General; but the Joint Committee were of opinion that in an autonomous Province it should in future be vested in the Governor himslf. It was urged by the British India Delegation that the power should continue to be vested in the Governor-General; and, although the Committee were unable to accept this proposal they suggested that *all temporary ordinances if extended beyond six months should be laid before Parliament,* and that the concurrence of the Governor-General should be obtained. (J.P.C. *Report,* Vol. I, Part I, para 106).

Such a Proclamation shall not, however, affect the operation of the High Courts.

The functions of the Governor in this connection shall be exercised by him in his discretion and no Proclamation shall be made by a Governor without the concurrence of the Governor-General in his discretion.

Joint Committee on breakdown clauses

The Joint Committee in justifying these provisions observe: "Events in more than one Province since the reforms of 1919 have shown that powers of this kind are unhappily not yet unnecessary and it is too soon to predict that even under responsible government their existence will never be necessary. . . The intention is to provide also for the possibility of a partial breakdown and to enable the Governor to take over part only of the machinery of government, leaving the remainder to function according to the ordinary law. Thus the Governor might, if the breakdown were in the legislative machinery of the Province alone, still carry on the government with the aid of his Ministers, if they were willing to support him ; we are speaking of course of such a case as the refusal of the Legislature to function at all, and not merely of lesser conflicts or disputes between it and the Governor . . . A constitutional breakdown implies no ordinary crisis and it is impossible to foresee what measures the circumstances might demand. It is right, therefore, that the Governor should be armed with a general discretionary power to adopt such remedies as the case may require."

Any such Proclamation may be revoked or varied by a subsequent Proclamation.

Conditions and period of proclamation

A Proclamation,

(*a*) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament ;

(*b*) unless it is a Proclamation revoking a previous Proclamation, shall cease to operate at the expiration of six months:

Provided that, if and so often as a resolution approving the continuance in force of such a Proclama- **Sec. 93**

tion is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of twelve* months from the date on which it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years. Within this period Parliament apparently is to make up its mind regarding the desirability of framing a new constitution or reverting to the normal methods under this constitution. But any law enacted by the Governor during such a period, subject to the terms thereof, shall continue to have effect until two years have elapsed from the date on which the Proclamation ceases to have effect, unless sooner repealed or re-enacted by Act of the appropriate Legislature.

J. P. C. Report on 'special powers'

Nobody can deny that the range of the Governor's powers is wide and extensive. The Joint Committee's plea in this matter is rather singular. "We may be thought to have laid too great emphasis", the Committee state, "upon the difficulties likely to arise in the working of the new Constitution in an Indian Province;......and if we have emphasised its difficulties, it is because we are anxious that Indians should not be misled by deceptive analogies with the constitutional practice of the United Kingdom. Responsible government postulates conditions which Indians themselves have still to create." They express, however, their hope and belief that 'it will never be necessary to put this power into operation; but its existence in the background, together with

* Lord Zetland in moving the change from six months to twelve said that the reason for extending the period was simply that 'it would seem rather unreasonable to trouble Parliament every six months to consider a case of this kind when the total period for which it might last was three years". (*Debates*, House of Lords, 3 July, 1935).

the whole body of the Governor's reserve power, may prove the most effective guarantee for the development of a genuine system of responsible government'.

C. Composition of Legislatures

The White Paper set out in detail the proposed composition of each Provincial Legislature, specifying both the allocation of seats and the method of election to them. In the case of the Legislative Assemblies, these were based upon the Communal 'Award' issued by His Majesty's Government on August 4, 1932, with such modifications as have been rendered necessary (1) by the later proposal to create a new Province of Orissa, and (2) by the so-called Poona Pact of September 25, 1932.

The Communal Decision did not, however, contain proposals for the composition of the Legislative Council of any Province.

Composition of the Councils

Regarding the composition of the Legislative Councils, the Joint Committee stated that since they were much smaller bodies than the Legislative Assemblies and it would be impossible therefore to provide in them for the exact equivalent of all the interests represented in the Lower House, it was proposed to include a certain number of seats to be filled by nomination by the Governor at his discretion, and accordingly available for the purpose of redress-

* For a lucid statement of the Indian point of view with regard to the special powers of the Governor, reference may be made to Sir Tej Bahadur Sapru's Memorandum on the subject (Appendix A, *Records*, Vol. III, p. 305 *et seq.*).

ing any possible inequality or to secure some representation to women in the Upper Houses.

Size of Councils

The size of the Councils varies from a maximum of 65 in Bengal to a minimum of 21 in Assam. They are to be constituted in part by nomination by the Governor to a maximum of 10 in Madras, and a minimum of 3 in Bihar, Bombay and Assam; in part by election by general, Mahomedan and European constituencies. In Bengal and Bihar, 27 and 12 members respectively are to be chosen by the Assemblies.

Two types of Councils

In two of the Upper Chambers, those in Bengal and Bihar, nearly half the members will be elected by the Lower House ; representation in both Houses in these Provinces will therefore rest substantially on the same body of primary electors. For direct electors to the Upper House, the qualifications may therefore be high on this ground no less than in fulfilment of the senatorial principle.

But, so far as the four other Provincial Upper Houses are concerned, namely, those in Madras, Bomay, United Provinces and Assam, the Lower Chambers will elect no representatives to them. Barring the small nominated element, all representatives will be directly elected by constituencies specially formed for the purpose. Electorates which will form the basis for the Lower Chambers will have no influence on them.

Electorate for Provincial Assemblies

The provincial electorate under the existing franchise numbers approximately 7,000,000 men and women, or about 3 per cent. of the population of British India. Since the franchise is in the main a property qualification and only a small number of Indian women are property owners in their own right, the number of women thus admitted to the franchise is very small and does not at the present time amount to more than about 315,000.

Lothian Committee

In 1932, between the Second and Third Sessions of the Round Table Conference, a Franchise Committee, which was presided over by the Marquess of Lothian, was appointed by His Majesty's Government for the purpose of examining the whole subject, with a view to an increase of the electorate to a figure not less than 10 per cent. of the population as recommended by the Statutory Commission, nor more than the 25 per cent. as suggested at the First Session of the Round Table Conference.

Franchise qualifications

The proposals of His Majesty's Government for the Provincial Franchise, as set out in an appendix to the White Paper, are mainly based, with certain modifications of minor importance only, save in the case of the women's franchise, on the Report of the Franchise Committee. The basis of the franchise proposed is essentially, as at present, a property qualification (that is to say, payment of land revenue or of rent in towns, tenancy, or assessment to income tax). To this are added an educational qualification and certain special qualifications designed to secure an adequate representation of women and to enfranchise approximately 10 per cent. of the Depressed Classes. It is also proposed to enfranchise retired pensioned and discharged officers, non-commissioned officers and men of His Majesty's Regular Forces, and to provide special electorates for the seats reserved for special interests, such as labour, landlords and commerce. The individual qualifications vary according to the circumstances of the different Provinces; but the general effect of the proposals is to enfranchise approximately the same classes and categories of the population in all Provinces alike.

Extent of increase

It is, however, estimated that the proposals in the White Paper would, if adopted, create a male electorate of between 28,000,000 and 29,000,000 and a female electorate of over 6,000,000, as compared with the present fiigures of 7,000,000 and 315,000; that is to say, about 14 per cent. of the total population of British India would be enfranchised as compared with the present 3 per cent. The proposals, therefore, go beyond the percentage suggested by the Statutory Commission and are nearly midway between that and the maximum

percentage suggested by the First Round Table Conference.

Joint Committee's satisfaction

The Joint Committee, however, felt satisfied, on the information before them, that the proposals taken as a whole were calculated to produce an electorate representative of the general mass of the population and one which would not deprive any important section of the community of the means of giving expression to its opinions and desires. The proposals, they thought, would, in the case of most of the Provinces redress the balance between town and country, which was at present heavily weighted in favour of urban areas ; they would secure representation for women, for the Depressed Classes, for industrial labour, and for special interests ; and they would enfranchise the great bulk of the small landlords, of the small cultivators, of the urban ratepayers, as well as a substantial section of the poorer classes.

The provisions relating to the franchise are set out in the Sixth Schedule to the Act, and are divided into two groups. The first group contains the general provisions applicable to the whole of British India; the second sets out the arrangements for the individual Provinces.

Electoral qualifications

No person is to be included in the electoral roll for any territorial constituency unless he has attained the age of twenty-one years and is either—

(*i*) a British subject ; or
(ii) the ruler or a subject of a Federated State ; or
(*iii*) if and so far as it is so prescribed with respect to any Province, and subject to any prescribed conditions, the Ruler or a subject of any other Indian State.

Categories of constituencies

The size of the Assemblies varies from 250 in Bengal, to 50 for the North-West Frontier Province. The Legislatures in the Provinces

will consist of members returned by as many as eighteen separate electorates* :—

(1) The so-called 'general', mainly consisting of Hindus ;
(2) General seats reserved for Scheduled Castes ;
(3) the Mohamedan ;
(4) the European ;
(5) the Anglo-Indian ;
(6) the Indian Christian ;
(7) the Sikh (in the Punjab) ;
(8) the Women's—'General' ;
(9) Do Sikh
(10) Do Muslim ;
(11) Do Anglo-Indian
(12) Do Indian Christian
(13) Commerce and industrial, mainly British, e.g., Chambers of Commerce, Planters' associations, Mining associations, etc.
(14) Indian Commerce and industry ;
(15) the Landholders ;
(16) Labour ;
(17) Universities ;
(18) Backward Areas and tribes.

Power is given to His Majesty in Council to make provisions, from time to time, with respect to franchise and elections, in so far as they have not been specified

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*The resulting voting alignment cannot be expected to secure the proper representation of public opinion in the country, the more so because of the predominantly property basis of the franchise. As Sir Samuel Hoare declared before the House of Commons on March 27, 1933 :—

"I do not wish to make prophecies about the future, least of all the Indian future. But I would ask hon. members to look very carefully at the proposals which we have made in the White Paper for the constitution of the Federal Legislature and of the Provincial Legislatures, and if they analyse these proposals I think they will agree with me that it will be almost impossible, short of a landslide, for the extremists to get control of the federal centre. I believe that, to put it at the lowest, it will be extremely difficult for them to get a majority in a Province like Bengal."

Orders-in-Council re: Franchise, etc.

Sec. 291

in the Act. For that purpose, a Delimitation of Constituencies Committee, with Sir Laurie Hammond as Chairman and Sir M. Venkatasubba Rao and Mr. Justice Din Muhammad as members, was appointed. After touring for four months, and receiving evidence, written as well as oral, the Committee, submitted their Report at the end of January, 1936*

Proposal of provision for adult suffrage

Major J. Milner attempted, in the course of the debate on the Bill in the House of Commons, to incorporate the following clause regarding extension of franchise: "A Provincial Legislature shall have the power to make a law amending the provisions of this Act for the purpose of extending the franchise to every person of the age of twenty-one years and upwards upon the sole basis of the residential qualification provided in this Act, and if at the expiration of ten years after the commencement of Part III of this Act (relating to Provincial autonomy) a Provincial Legislature has failed to make such a law His Majesty in Council may make provision accordingly." He said that the powers given to the Indian Legislatures in this respect are only recommendatory and the 'sole power to deal with these matters is retained by His Majesty's Government'. It should be within the power of a Provincial Legislature to make its own laws in this respect. He added:—"A Provincial Legislature is well able—probably better able than the Imperial Parliament sitting in this country—to decide when it is administratively possible for the people in a Province to have adult suffrage. In our view, the question of administrative practicability affords the only ground of objection to adult suffrage." He further said that the Bill would only permit alterations to be made in this respect after ten years had passed. He thought that it might easily be practicable in some Provinces to have adult suffrage before that time, and he believed that the extended franchise, such as it was, to be conferred by this Bill, would conceivably inspire interest and enable Provincial Governments to train their presiding officers and other election officials so that it might be possible, not only in the towns but

Constituent powers to local Legislatures

* *Vide*, Appendix I at the end of the book on "The Report of the Indian Delimitation Committee (1936)".

elsewhere in some Provinces, to bring about adult suffrage within less than 10 years.

Arguments in favour of adult suffrage

Major Milner repeated the four arguments urged by the Franchise Committee, which included Mr. Butler, in favour of adult suffrage. In the first place, adult suffrage is the only way in which it is possible to get an absolute equality of political rights. The second reason is that adult suffrage is obviously the best means of ensuring the representation of the people of a country as a whole. Thirdly, in India, in particular, adult suffrage would solve what is admitted by all to be the difficult problem of securing representation of all the elements in that very varied population, whether those elements were rich or poor, men or women or the oppressed classes or labour or any others. A form of adult suffrage would obviously bring about the best representation of every section of the community. Fourthly, adult suffrage would avoid the necessity that we all deplore in the circumstances in India at present of having fancy or special franchises for different sections of the community, for example, for women, for depressed classes, for labour and for other classes, such as are to be provided for in the Schedule on this matter. Mr. Attlee supported Major Milner.

Rejection of the proposal

Mr. Butler urged the many practical difficulties relating to the amendment and also pointed out that it would be impossible in India to poll more than 25,000,000 in one day, and even that would entail the dislocation of some of the ordinary business of government in administration. The amendment was, later, negatived.*

Women's franchise

Under the Act, the franchise has been extended to all women—

(1) who possess a property qualification in their own right;

(2) who are the wives or widows of men with property qualifications;

(3) who are the wives of men with a military service qualification for the vote;

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* *Debates*, House of Commons, April 30 and May 3, 1935.

(4) who are the pensioned widows and mothers of Indian officers, non-commissioned officers and soldiers or members of the Regular forces or of any British India police force;

(5) who have an educational qualification.

In general, women qualified to vote, otherwise than in respect of a property qualification in their own right, are required to make an application to be placed on the electoral roll. This "application" requirement, however, is to be dispensed with in the case of women qualified in respect of their husband's property in certain Provinces, e.g., Bengal, Bihar, the urban areas in the United Provinces, etc.

Proposal for increase in Women's seats

In the House of Commons Miss Eleanor Rathbone and Miss Irene Ward pressed for an increase in the number of reserved seats allotted to women in the Assemblies of Bengal, Assam and the North-West Frontier Province. The Under-Secretary of State pointed out the difficulties in disturbing the allocation of seats made according to the Communal Decision.* Later in the House of Lords, the Marquess of Lothian moved an amendment, which without altering the proposed distribution of seats, would empower each Legislature within the next ten years, if so desired, to ask Parliament to reserve one or two seats for women in those Provincial Legislatures which either have no women, or only one. Viscount Halifax replying, on behalf of Government, assured that it would certainly be in the power of the Legislature to pass a resolution dealing with this matter, and it will be the policy of His Majesty's Government to try to give effect to it.†

* *Debates*, House of Commons, May 10, 1935.
† *Debates*, House of Lords, July 8, 1935.

TABLE OF SEATS

Provincial Legislative Assemblies

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
		General Seats												Seats for Women				
Province	Total Seats	Total of General Seats	General Seats reserved for Scheduled Castes	Seats for representatives of backward areas and tribes	Sikh Seats	Mahomedan Seats	Anglo-Indian Seats	European Seats	Indian Christian Seats	Seats for representatives of commerce, industry, mining and planting	Landholders' Seats	University Seats	Seats for representatives of labour	General	Sikh	Mahomedan	Anglo-Indian	Indian Christian
Madras	215	146	30	1	–	28	2	2	8	6	6	1	6	6	–	1	–	1
Bombay	175	114	15	1	–	29	2	3	3	7	2	1	7	5	–	1	–	–
Bengal	250	78	30	–	–	117	3	11	2	19	5	2	8	2	–	2	1	–
United Provinces	228	140	20	–	–	64	1	2	2	3	6	1	3	4	–	2	–	–
Punjab	175	42	8	–	31	84	1	1	2	1	5	1	3	1	1	2	–	–
Bihar	152	86	15	7	–	39	1	2	1	4	4	1	3	3	–	1	–	–
Central Provinces and Berar	112	84	20	1	–	14	1	1	–	2	3	1	2	3	–	–	–	–
Assam	108	47	7	9	–	34	–	1	1	11	–	–	4	1	–	–	–	–
North-West Frontier Province	50	9	–	–	3	36	–	–	–	–	2	–	–	–	–	–	–	–
Orissa	60	44	6	5	–	4	–	–	1	1	2	–	1	2	–	–	–	–
Sind	60	18	–	–	–	33	–	2	–	2	2	–	1	1	–	1	–	–

In Bombay seven of the general seats shall be reserved for Marathas.
In the Punjab one of the Landholders' seats shall be a seat to be filled by a Tumandar.
In Assam the seat reserved for women shall be a non-communal seat.

TABLE OF SEATS

Provincial Legislative Councils

1 Province	2 Total of Seats	3 General Seats	4 Mahom-medan Seats	5 European Seats	6 Indian Christian Seats	7 Seats to be filled by Legislative Assembly	8 Seats to be filled by Governor
Madras . . .	Not less than 54 Not more than 56	35	7	1	3	–	Not less than 8 Not more than 10
Bombay . .	Not less than 29 Not more than 30	20	5	1	–	–	Not less than 3 Not more than 4
Bengal . . .	Not less than 63 Not more than 65	10	17	3	–	27	Not less than 6 Not more than 8
United Provinces .	Not less than 58 Not more than 60	34	17	1	–	–	Not less than 6 Not more than 8
Bihar . . .	Not less than 29 Not more than 30	9	4	1	–	12	Not less than 3 Not more than 4
Assam . . .	Not less than 21 Not more than 22	10	6	2	–	–	Not less than 3 Not more than 4

APPENDIX A

Excluded and Partially Excluded Areas

Under the Montagu-Chelmsford Reforms of 1919 certain areas were treated as "Backward Tracts" and excluded from the benefits of the Reforms. Sec. 52-A, sub-sec. (2), of the Government of India Act 1919, runs thus :

Backward tracts under the Montagu Reforms

"The Governor-General in Council may declare any territory in British India to be a 'backward tract' and may by notification, with such sanction as aforesaid (*i.e.* with the sanction of His Majesty previously signified by the Secretary of State in Council) direct that this Act shall apply to that territory subject to such exceptions and modifications as may be prescribed in the notification.

"Where the Governor-General in Council has, by notification, directed as aforesaid, he may, by the same or subsequent notification, direct that any Act of the Indian Legislature shall not apply to the territory in question or any part thereof or shall apply to the territory or any part thereof subject to such exceptions or modifications as the Govenor-General thinks fit, or may authorise the Governor in Council to give similar directions as respects any Act of the local legislature."

Their disabilities

These areas suffered from disabilities of two different kinds. They were not allowed any right of direct representation to the Legislature ; and the new Legislatures were deprived of their jurisdiction over these areas. So far as the executive Government was concerned power was placed in the 'Governor in Council' ; and usually about half of the Executive Councillors being Indians, the government of these backward areas was Indianized to that extent.

Recommendation of the Simon Report

The Simon Commission was responsible for the new nomenclature "excluded areas" and they suggested that the administration of such areas should be transferred from provincial Governments to the Government of India.* The Joint Committee, however, definitely recommended that these areas should be administered by the Governor himself, and the Ministers will have "no constitutional right to advise him in connection with them."

Declaration of Excluded and Partially Excluded Areas

Sec. 91

The Government of India Act (1935) provides that His Majesty may at any time by Order in Council—

(*a*) direct that the whole or any specified part of an excluded area shall become, or become part of, a partially excluded area ;

(*b*) direct that the whole or any specified part of a partially excluded area shall cease to be a partially excluded area or a part of such an area ;

(*c*) alter, but only by way of rectification of boundaries, any excluded or partially excluded area ;

(*d*) on any alteration of the boundaries of a Province, or the creation of a new Province, declare any territory not previously included in any Province to be, or to form part of, an excluded area or a partially excluded area ; and any such order may contain such incidental and consequential provisions as appear to His Majesty to be necessary and proper.

It was also laid down that the Secretary of State shall lay the draft of the Order which it was proposed to recommend His Majesty to make before Parliament within six months from the passing of the Act.

Administration of such areas

Sec. 92

The Governor may make regulations for the peace and good government of any area in a Province which is for the time being an excluded area, or a partially excluded area, and any Regulations so made may repeal or amend any Act of the Federal Legislature or of the Provincial Legislature, or any existing Indian law, which is for the time being applicable to the area in question. Regulations made under this provision shall be submitted forthwith to the Governor-General and until assented to by him in his discretion shall have no effect.

**Vide*, Vol. I, Part II, Chapter 7; and Vol. II, Part III, Chapter 2 of the *Report of the Indian Statutory Commission.*

The executive authority of a Province extends to excluded and partially excluded areas therein, but, notwithstanding anything in the Act, no Act of the Federal Legislature or of the Provincial Legislature, shall apply to an excluded area or a partially excluded area, unless the Governor by public notification so directs, and the Governor in giving such a direction with respect to any Act may direct that the Act shall in its application to the area, or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit.

The Governor shall, as respects any area in a Province which is for the time being an excluded area, exercise his functions in his discretion.

Joint Committee on the distinction between Excluded and Partially Excluded areas

The Joint Parliamentary Committee in their Report recommended that while in relation to an excluded area the Governor will himself direct and control the administration, in the case of partially excluded areas he will have a special responsibility. "A distinction", the Committee state, "might well be drawn in this respect between Excluded Areas and Partially Excluded Areas, and that the application of Acts to, or the framing of Regulations for, Partially Excluded Areas is an executive act which might appropriately be performed by the Governor on the advice of his Ministers, the decisions taken in each case being of course, subject to the Governor's special responsibility for Partially Excluded Areas, that is to say, being subject to his right to differ from the proposals of his Ministers if he thinks fit." It will be noticed that under the new arrangement, the expenditure required for those areas has been made non-votable, and the power to declare any area as excluded or partially excluded is transferred to the British Parliament.

Order-in-Council re: such areas

According to the text of a draft Order-in-Council published on January 31, 1936, a large increase in the partially and totally excluded areas under the Government of India Act, involving approximately half of the aboriginal population of India, has been decided by His Majesty's Government. The Order-in-Council embodies without change the Government of India's proposals, increasing the excluded areas to eight and the partially excluded areas to 28.

No addition can in future be made to these areas, while the excluded areas can be converted into partially excluded areas and the latter brought to the list of normally administered areas. The excluded areas will be a special charge of the Governor, while the partially excluded areas will be represented in the provincial legislatures and be in charge of the Ministers, the Governor reserving the right to modify legislation or issue regulations for such areas or interfere in administrative acts.*

Principle guiding selection of (a) Excluded Areas

The Government of India explain the principles which guided them in selecting the areas as follows:

(1) The recommendations for the excluded areas are limited to the Frontier and the border tracts in Assam and such other areas, for instance, the Laccadive and the Minicoy Islands off the west coast of Madras, and Spiti and Lahaul in north of the Punjab, whose geographical position isolates them from the normal life and administration of the province in whose territories they lie.

(b) Partially Excluded Areas

(2) In the selection of areas for partial exclusion the Government of India have kept prominently, but not exclusively, in view the general distribution of aboriginal and primitive peoples through the uplands of the Indian continent, and in their recommendations have sought to define the selected areas with as much precision as possible, and to choose boundaries capable of being expressed in simple and easily intelligible terms.

The partially excluded areas contained in the Second Schedule are as follows:

Madras: East Godavari and so much of Vizagapatam as is not transferred to Orissa under the provisions of the Government of India (Constitution of Orissa) Order of 1936.

Bombay: In west Khandesh district the Sahada, Bunderbar, and Taloda taluks, Navapur, Petha and Akrani mahal and villages belonging to the following

* The broad effect of declaring an area to be partially excluded has been put very concisely by the Government of India as "simply to subject the normal legislation and executive jurisdiction of a province in selected areas to a degree of personal control by the Governor."

Mehwassi Chiefs, namely, (1) Parvi of Kati, (2) Parvi of Nal, (3) Parvi of Singpur, (4) Walvi of Gaohati, (5) Wassawa of Chikli and (6) Parvi of Navalpur. Satpura Hills—reserved forest areas of the east Khandesh district, the Kalvan taluk and Point Petha of Nasik district. Dahanu and Shahapur taluks and Mohada and Umbergaon *pethas* of Thana district and Jhalod mahal of Broach and Wauch mahals district.

Bengal: Darjeeling district, Sherpur and Susang parganas of Mymensingh district.

The United Provinces: Jaunsar, Bawar Pargana of Dehra Dun district and a portion of Mirpur district, south of Kaimur Range.

Bihar: Chota Nagpur Division and Santal Parganas district.

Central Provinces and Berar: In Chanda district, Ahiri zamindari in Sironcha tahsil, Dhanora, Dudmala, Gewardha, Jharapapra, Khutgaon, Kotgal, Muramgaon, Palasgarh, Rangi, Sirsundi, Sonsari, Chandala, Gilgaon, Pai Muranda and Potegaon Zemindaries in Garchiroli tahsil, Harrai, Goraghat, Gorpani, Batkagarh, Bardagarh, Partabgarh (Pagara), Almood and Sonpur jagirs of Chhindwara district and a portion of Pachmarhi jagir in Shhindwara district. Mandla District. Pendra, Kenda, Matir, Lapha, Upiora, Chhuri and Korba zemindaris of Bilaspur district. Aundhi, Koracha, Panabaras and Ambagarh Chauki zemindaris of Drug district, Baijar tahsil of Balaghat district, Bhainsdehi tahsil of Betul district. Melchat taluq of Amraoti district.

Assam: Garo Hills district, Mikir Hills (in Nowgong and Sibsagar districts), British portion of Khasi and Jaintia Hills district other than the Shillong Municipality and the cantonment.

Orissa: District of Angul, District of Sambalpur. Areas transferred from the Central Provinces under the provisions of the Government of India (Constitution of Orissa) Order of 1936. Ganjam Agency Tracts. Areas transferred to Orissa under the provisions of the aforesaid order from Vizagapatam Agency in the Presidency of Madras.

Genesis of the Order-in-Council

It is worthy of note that the original proposals of the Government of India, as embodied in the Sixth Schedule to the Bill, included four Excluded areas,

viz., the North-east Frontier tracts, the Naga Hill District, the Lushai Hills District and the Chittagong Hill tracts ; and eleven Partially Excluded areas only.

Major Cadogan's proposals

Mr. Cadogan, a member of the Statutory Commission moved an amendment in the House of Commons (10th May, 1935), providing for 20 Excluded and 32 Partially Excluded Areas. He observed that the amendment involved the fate of 21 million people, and explained that the Bill only set up machinery to raise the excluded areas to 'the constitutional status of the rest of each Province when they are considered to be fit for such a change ; there is no provision whatever for the reverse process, which might very conceivably prove to be necessary. Mr. Cadogan expressed the opinion that it was more expedient to start by taking the risk of over-excluding rather than under-excluding. He received influential support including that of Mr. Attlee and Sir Reginald Craddock. The Attorney-General later agreed to withdraw the schedule but added: "We are making no promises and holding out no prospects of any substantial addition to the category of excluded areas . . . We will lay a Paper before the House with all the information and facts and all the necessary references before the Order-in-Council is made. The House will have the fullest opportunity of forming its own opinion upon the facts, which will be laid before it in the most convenient form".

Attorney-General's statement

Enquiry in India

A month later the Secretary of State sent instructions to the Government of India, stating that a *prima facie* case existed for special treatment in the areas where the aboriginal population was in a majority. Their instructions meant the addition of a large area. The Provincial Governments, accordingly, made proposals and the Government of India further added to the list of such areas on the basis of the principles referred to in an earlier paragraph. Mr. J. P. Mills was in charge of the enquiry to advise the Government of India.

Conservative opinion in England, as the debate on the draft Order further revealed, was in favour of exclusion on a large scale. But, it is often overlooked that it could hardly please an area which had participated in

the two past Reformed constitutions to find itself shut out altogether from the new scheme of Reforms, as has been pointed out by a well-known publicist. He adds: "Such an area might become a centre of acute political discontentment. Apart frcm this, there are districts which, having been out of the Reforms altogether, demand admission on the ground that they have progressed sufficiently to deserve piomotion. . . No one expects Backward areas to remain backward for all time ; and the whole question centres on whether steps could be taken to put them on the road to civilization. Financially, they are a burden on the Provincial Governments because they have been deficit areas all along. But even so, a desire to level them up must exist not only in the better educated men in those parts but also in the neighbouring districts."*

Criticism of the arrangement

Special advisers for such areas?

Moreover, certain anxiety was feit in the House of Commons as to the means available to Governors of securing a knowledge of the partially excluded areas and the appointment of special advisers was suggested to the Government of India by the Secretary of State. As provincial opinion is divided,—Assam, Bengal and Bihar and Orissa, being opposed to the proposal,—the Government of India do not consider it necessary to take a decision on the subject as under the new Constitution power will rest with Governors to decide whether such appointments are required by local conditions.

The Indian Assembly Debate

The Debates in the Indian Legislative Assembly on the draft Order on the 11th and the 18th February, 1936, reveal once more that political India generally likes as little exclusion as possible and is definitely opposed to the ear marking of an Excluded India side by side with the two Indias which exist already. There has been an expectation in recent years that a new stage of Reforms would see a reduction rather than an extension of excluded areas, even though a minimum of them might have to, for the time being, remain outside the control of Legislatures.

The Assembly adopted, without division, the following resolution: "This Assembly recommends to the Governor-General-in-Council that he may be

* "An Indian Observer" in *The Sunday Statesman*, 16 February, 1936.

pleased to take such steps as he thinks necessary and proper to extend the same level of administration to the people of the Excluded Areas and partially excluded areas in Chief Commissioner's provinces, including British Beluchistan, positively from January 1, 1937, particularly by immediately moving His Majesty's Government to secure an appropriate amendment to the recent draft of the Order-in-Council on the subject of èxcluded and partially excluded areas".*

Both the House of Parliament, however, confirmed the Excluded Areas Order in February, 1936, which has received Royal sanction subsequently.

* The view of the Government of India was explained at some length by Dr. J. H. Hutton, who complied the last India Census Report and represented the Assam Government in the Assembly. He pointed out that though the speeches supporting the resolution opposed exclusion or partial exclusion of areas, the resolution, as worded, merely suggested that these areas should have the same standard of administration.

Dr. Hutton on Exclud-ed Areas

He said that exclusion was not based in the case of Assam on the ground of educational backwardness. The reason was that there was a clash of interest between hill and plains people and the former feared that the majority vote would seriously affect their economic interests in the matter of legislation relating to land revenue, forests and fisheries.

As regards the islands off South India, no elected representative would be able to keep in touch with a constituency 125 to 250 miles in the sea, where even the Collector paid a visit once in two years . The language and dialect difficulties were enormous. In some villages the language spoken differed even from street to street.

Further, to legislate against the primitive customs of hill tribes was to court rebellion which in such areas was always feared and proved very costly.

In the Naga Hills, where he had 20 years' experience, once such rebellion cost over 20 lakhs of rupees.

From the economic point of view also the cost of civilized administration would be prohibitive. After all, those hill tracts (Naga) were taken over only to save the plains from raids, and the people being of Mongolian stock considered an Indian as much a foreigner as the European. He added that the best policy was to exclude the areas now, and as the people advanced to include them among the administered areas.

APPENDIX B

Transitional Provisions

In Part XIII of the Act, eight sections specify the transitional arrangement with respect to the period elapsing between the commencement of Provincial Autonomy and the establishment of the Federation. The Joint Parliamentary Committee in their Report suggested that it would be necessary to keep in being the existing Central Legislature, composed as at present and elected upon the existing franchise and with the existing number of nominated members, official and non-official. They thought that there should be no necessity during the transitory period to alter the composition of, or the method of appointment to, the existing Central Excutive. But they recognised that the establishment of Provincial Autonomy would necessitate consequential changes in the powers of both the Central Legislature and the Central Executive. **Sec. 312**

Sir Samuel Hoare explained that the change, during the transitional period, in the system of Indian Government as it now existed, would be the change made by the setting up of Provincial autonomy, which would mean the introduction of a strictly delimited list Financial Adviser on the spot, for it is better that he Autonomous Provinces in future will be responsible for the subjects set out in the provincial list. That in itself, observed Sir Samuel, would make a difference between the transitional period and the present system of Government, which is a unitary system of government.* **Legislative lists**

The powers conferred by the provisions of the Constitution Act on the Federal Legislature shall be exercisable by the Indian Legislature. The Governor-General in Council and the Governor-General shall be under the general control of and comply with such **The Centre** **Sec. 313**

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* *Debates*, House of Commons, April 9, 1935.

particular directions, if any, as may from time to time be given by the Secretary of State.

It was explained that when Provincial Autonomy was set up, the position of the Secretary of State would be that set out in the Act in connection with Provincial Autonomy. So far as the Centre was concerned, the Secretary of State's control would continue just as before.* Regarding the India Council it is provided that on the establishment of the Federation, such of the advisers as the Secretary of State may direct shall cease to hold office in order that the Secretary of State may terminate the appointment of such of his advisers as are in excess of the maximum number of six which he is to have when the Federal part of the Bill comes into operation. It is assumed that any appointment made in the transitional period would envisage the probability that the term of service would be terminated by the commencement of Federation and that those so appointed would be warned on their appointment that this was likely to be the case. During the transitional period it is possible under the terms of the Act for the Secretary of State to have a miximum of 12 and a minimum of eight. It is when the Federation comes into force that the numbers are reduced by the Act to six and three respectively.†

Control of India Office

Sec. 314

Notwithstanding the fact that the Federation has not yet been established, the Federal Court, the Federal Public Service Commission and the Federal Railway Authority shall come into existence and be known by those names and shall perform in relation to British India the like functions as they are by or under the Act to perform in relation to the Federation when established.

Federal Court, Railway Authority, etc.

Sec. 318

Mr. Morgan Jones in the course of the debate on the Bill in the Commons observed that during the transitional period two consequences must follow. One, that the Provinces would be in full exercise of their

* *Debates*, House of Commons, 9 April, 1935. Speech by Sir Samuel Hoare.

† *Debates*, House of Commons, 9 April, 1935. Speech by Mr. Butler, Under-Secretary of State.

provincial powers and that as a consequence the Central Assembly, the present Legislative Assembly, would be in possession of much more limited powers than hitherto. Mr. Morgan Jones thought that was a very strong reason, indeed, for seeing to it that the transitional period was not unduly prolonged. If the Central Assembly as it was now, was shorn of some of its powers, still existed with the Governor-General and his council exercising full authority as hitherto, and they found themselves in a position of suspended animation, then the Government would, in his opinion, be creating a state of resentment, which he was sure they would deplore.* Similar views were also expressed by the British Indian Delegation in their Memorandum and by Sir Tej Bahadur Sapru.

Need for early termination of transition

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* *Debates,* House of Commons, 9 April, 1935.

APPENDIX C

The Communal Decision and the Poona Pact

The following is the relevant text of the Communal 'Award' by Mr. Ramsay Macdonald, Prime Minister, dated the 4th August, which was published simultaneously in London and Simla on the 16th August, 1932:

Text of the 'Award'

"In the statement made by the Prime Minister on December 1 last on behalf of his Majesty's Government at the close of the second session of the Round Table Conference which was immediately afterwards endorsed by both Houses of Parliament, it was made plain that if the communities in India were unable to reach a settlement acceptable to all parties on the communal question which the Conference had failed to solve, His Majesty's Government were determined that India's constitutional advance should not on that account be frustrated and that they would remove this obstacle by devising and applying themselves a provisional scheme.

Decision on some aspects of problem

"On March 19 last His Majesty's Government, having been informed that the continued failure of the communities to reach an agreement was blocking the progress of the plans for the framing of a new constitution, stated that they were engaged upon a careful re-examination of the difficult and controversial questions which arose. They are now satisfied that without the decision of at least some aspects of the problem connected with the position of the minorities under the new constitution no further progress can be made with the framing of the constitution.

Proposals confined to Provinces only

"His Majesty's Government have accordingly decided that they will include provisions to give effect to the scheme set out below in the proposals relating to the Indian constitution to be laid in due course before Parliament. The scope of this scheme is purposely confined to the arrangements to be made for representation of the British Indian communities in the provincial legislatures, the consideration of representation in the legislature at the centre being deferred. The decision to limit the scope of the scheme implies no failure to realise that the framing of the constitution will necessitate decision of a number of other problems of great importance to the minorities, but has

been taken in the hope that once a pronouncement has been made upon the basic questions of the method and proportion of representation, the communities themselves may find it possible to arrive at a *modus vivendi* on their communal problems which have not as yet received the examination they require. His Majesty's Government wish it to be most clearly understood that they themselves can be no parties to any negotiations which may be initiated with a view to revision of their decision and will not be prepared to give consideration to any representation aimed at securing a modification of it which is not supported by all parties affected. But they are most desirous to close no door to an agreed settlement, should such happily be forthcoming. If, therefore, before the new Government of India Act has passed into law they are satisfied that the communities who are concerned are mutually agreed upon a practicable alternative scheme either in respect of any one or more of the Governor's provinces or in respect of the whole of British India, they will be prepared to recommend to Parliament that the alternative should be substituted for the provisions now outlined.

Revision of Decision not to be considered

"Election to the seats allotted to Mahomedan, European and Sikh constituencies will be by voters voting in separate communal electorates covering between them the whole area of a province (apart from any portions which may in special cases be excluded from the electoral area as 'backward'.) Provisions will be made in the constitution itself to empower the revision of this electoral arrangement (and other similar arrangements mentioned below) after 10 years, with the assent of the communities affected, for the ascertainment of which suitable means will be devised.

Communal separate electorates

"All qualified electors who are not voters either in a Mahomedan, Sikh, Indian Christian, Anglo-Indian, or European constituency will be entitled to vote in a general constituency.

"Seven seats will be reserved for Mahrattas in certain selected plural member general constituencies in Bombay.

"Members of the 'depressed classes' qualified to vote will vote in a general constituency. In view of the fact that for a considerable period these classes would be unlikely by this means alone to secure any adequate representation in the Legislature, a number of special seats will be assigned to them. These seats will be filled by election from special constituencies in which only members of 'the depressed

Concession to Depressed Classes

classes' electorally qualified will be entitled to vote. Any person voting in such a special constituency will, as stated above, be also entitled to vote in a general constituency. It is intended that these constituencies should be formed in selected areas where the depressed classes are most numerous and that except in Madras they should not cover the whole area of a province. In Bengal, it seems possible that in some general constituencies the majority of voters will belong to the depressed classes. Accordingly, pending further investigation, no number has been fixed for the members to be returned from the special depressed class constituencies in that province. It is intended to secure that the depressed classes should obtain not less than 10 seats in the Bengal Legislature.

Period of continuance

"His Majesty's Government do not consider that these special 'depressed classes' constituencies will be required for more than a limited time. They intend that the constitution shall provide that they shall come to an end after 20 years, if they have not previously been abolished under the general powers of electoral revision.

Indian Christians

"The election to the seats allotted to Indian Christians will be by voters voting in separate communal electorates. It seems almost certain that practical difficulties will, except possibly in Madras, prevent the formation of Indian Christian constituencies covering the whole area of a province and that accordingly special Indian Christian constituencies will have to be formed only in one or two selected areas in a province. The Indian Christian voters in these areas will not vote in a general constituency. Indian Christian voters outside these areas will vote in a general constituency. Special arrangements may be needed in Bihar and Orissa, where a considerable proportion of the Indian Christian community belong to the aboriginal tribes.

Anglo-Indians

"The election to seats allotted to Anglo-Indians will be by voters voting in separate communal electorates. It is at present intended, subject to investigation of any practical difficulties that may arise, that Anglo-Indian constituencies shall cover the whole area of each province, postal ballot being employed, but no final decision has yet been reached.

Women Members

"His Majesty's Government attach great importance to securing that new legislatures should contain at least a small number of women members. They feel at the outset that this object could not be achieved without creating a certain

number of seats specially allotted to women. They also feel it is essential that women members should not be drawn disproportionately from one community. They have been unable to find any system which would avoid this risk and would be consistent with the rest of the scheme for representation which they have found it necessary to adopt except that of limiting the electorate for each special woman's seat to voters from one community. There is one exception. The woman's seat in Assam will be filled from a non-communal constituency at Shillong. Special women's seats have accordingly been specifically divided between the various communities. The precise electoral machinery to be employed in these special constituencies is still under consideration.

Labour

"The seats allotted to 'labour' will be filled from non-communal constituencies. Electoral arrangements have still to be determined, but it is likely that in most of the provinces labour constituencies will be partly trade union and partly special constituencies as recommended by the Franchise Committee.

Commerce and Industry, Mining, etc.

"Special seats allotted to commerce and industry, mining and planting will be filled by election through chambers of commerce and various associations. Details of electoral arrangements for these seats must await further investigation.

Determination of Constituencies

"His Majesty's Government have found it impossible in determining these questions of representation in provincial legislatures to avoid entering into considerable detail. There remains nevertheless the determination of constituencies. They intend that this task should be undertaken in India as early as possible. It is possible in some instances that delimitation of constituencies might be materially improved by slight variations from the number of seats now given. His Majesty's Government reserve the right to make such slight variations for such a purpose, provided they would not materially affect the essential balance between the communities. No such variations will, however, be made in the case of Bengal and the Punjab.

Variation in number of seats

Second Chambers

"The question of composition of second chambers in the provinces has so far received comparatively little attention in constitutional discussions and requires further consideration before a decision is reached as to which provinces shall have a second chamber or a scheme is drawn up for their composition. His Majesty's Government consider that the

composition of the upper house in a province should be such as not to disturb in any essential the balance between the communities resulting from the composition of the lower house.

Central Legislature

"His Majesty's Government do not propose at present to enter into the question of the size and composition of the legislature at the centre since this involves among other questions that of representation of Indian States which still needs further discussion. They will, of course, when considering the composition, pay full regard to the claims of all communities for an adequate representation therein."

Mr. Macdonald's statement

The Prime Minister, Mr. Ramsay Macdonald, issued an explanatory statement, 'not only as the Prime Minister but as a friend of India who has for the last two years taken a special interest in the question of minorities'. The Government, observed Mr. Macdonald, never wished to intervene in the communal controversies of India. But as the failure of the communities to agree amongst themselves had almost placed an almost insurmountable obstacle in the way of constitutional development, it was incumbent upon Government to take action. He argued that however much Government might have preferred a uniform system of joint electorates, they found it impossible to abolish the safeguards to which the minorities still attached vital importance. The Government, therefore, had to face facts and maintain this exceptional form of representation.

Representation of Depressed Classes

He further alluded to two features of the decision, *viz*, the representation of the depressed classes and of women. He observed on the former point: "Our main object in the case of the Depressed Classes has been, while securing to them the spokesmen of their own choice in the legislatures of the province where they are found in large numbers, at the same time to avoid electoral arrangements which would perpetuate their segregation. Consequently, Depressed Class voters will vote in general Hindu Constituencies and an elected member in such a constituency will be influenced by his responsibility to this section of the electorate, but for the next 20 years there will also be a number of special seats filled from special Depressed Class electorates in the areas where these voters chiefly prevail. The anomaly of giving certain members of

the Depressed Classes two votes is abundantly justified by the urgent need of securing that their claims should be effectively expressed and the prospects of improving their actual condition promoted."

On the second point, Mr. Macdonald confessed that there were undoubtedly serious objections to extending the communal method to the representation of women. But, he added, that "if seats are to be fairly distributed among the communities, there is, in the existing circumstances, no alternative." He urged that critics of the decision in India should remember when examining the scheme, that 'they themselves failed when pressed again and again to produce to us some plan which would give general satisfaction.'

Genesis of the Poona Pact

Mr. Gandhi's letters on Depressed Class electorates

Some months prior to the publication of the 'Award' Mr. M. K. Gandhi had addressed a letter from the Yervada Central Prison to Sir Samuel Hoare, dated the 11th March 1932. In this, Mr. Gandhi invited the special attention of the Secretary of State to the statement made by himself at the end of his speech at the Second Session of the Round Table Conference where he said that he would resist with his life the grant of separate electorates to the Depressed Classes.

On the publication of the Prime Minister's Communal Decision, Mr. Gandhi wrote to the Prime Minister on August 18, in which he intimated to the Government that, while many other parts of the communal decision were open to very grave objection, they did not warrant such self-immolation as he proposed, by going on a fast on the 20th September, which fast he would continue even if he was released. Mr. Macdonald in his reply, dated September 8th, explained the purpose of the arrangements regarding the depressed classes and observed that having once given their decision the Government would stand by it, the only alternative being an agreement by the communities themselves. In a final letter to Mr. Macdonald, written the next day, Mr. Gandhi said that the matter was 'one of pure religion' with him, and he asked: "Do you realise that, if your decision stands and the constitution comes into being, you arrest the marvellous growth of the work of the Hindu reformers who have

Mr. Macdonald's reply

dedicated themselves to the uplift of their suppressed brethren in every walk of life?" He had, Mr. Gandhi said, in this circumstance, been compelled reluctantly to adhere to the decision conveyed to the Prime Minister.

The Poona Pact

Between the 19th and 24th September, representatives of the depressed classes and public men including Pandit Malaviya, Dr. Ambedkar, Dr. Solanki, Rao Bahadur Srinivasan, Sir Tej Bahadur Sapru, Mr. Jayakar, Rao Bahadur M. C. Rajah, Mr. P. Ballo and Mr. Rajbhoj met at Bombay and Poona and ultimately produced, in consultation with Mr. Gandhi, an agreement which was accepted by the Government on the 26th. The following is the text of the agreement:—

Assignment of Seats

(1) There shall be seats reserved for the Depressed Classes out of the general electorate seats in the Provincial Legislatures as follows: Madras 30; Bombay with Sind 15; Punjab 8; Bihar and Orissa 18; Central Provinces 20; Assam 7; Bengal 30; United Provinces 20; Total 148. These figures are based on the total strength of the Provincial Councils, announced in the Prime Minister's decision.

Procedure of election

(2) Election to these seats shall be by joint electorates subject, however, to the following procedure:

All the members of the Depressed Classes registered in the general electoral roll in a constituency will form an electoral college, which will elect a panel of four candidates belonging to the Depressed Classes for each of such reserved seats, by the method of the single vote; the four persons getting the highest number of votes in such primary election, shall be candidates for election by the general electorate.

Representation in Central Legislature

(3) Representation of the Depressed Classes in the Central Legislature shall likewise be on the principle of joint electorates and reserved seats by the method of primary election in the manner provided for in Clause two above, for their representation in the Provincial Legislatures.

(4) In the Central Legislature, eighteen per cent. of the seats allotted to the general electorate for British India in the said legislature shall be reserved for the Depressed Classes.

(5) The system of primary election to a panel of candidates for election to the Central and Provincial Legislatures as

hereinbefore mentioned, shall come to an end after the first ten years, unless terminated sooner by mutual agreement under the provision of Clause six below.

Term of Pact

(6) The system of representation of the Depressed Classes by reserved seats in the Provincial and Central Legislatures as provided for in Clauses 1 and 4 shall continue until determined by mutual agreement between the communities concerned in the settlement.

(7) Franchise for the Central and Provincial Legislatures for the Depressed Classes shall be as indicated in the Lothian Committee's Report.

Local Bodies, Services and Education

(8) There shall be no disabilities attaching to any one on the ground of his being a member of the Depressed Classes in regard to any election to local bodies or appointment to the Public Services. Every endeavour shall be made to secure fair representation of the Depressed Classes in these respects, subject to such educational qualifications as may be laid down for appointment to the Public Services.

(9) In every province out of the educational grant, an adequate sum shall be earmarked for providing educational facilities to the members of the Depressed Classes.

Government's explanatory statement in accepting relevant parts of Poona Pact

The Government in accepting the Poona Settlement observed that the total number of general seats, including those reserved for the Depressed Classes under the agreement, will in each province remain the same as the number of general seats plus the number of special Depressed Class seats provided for in the decision of His Majesty's Government.

His Majesty's Government note that the agreement deals also with certain questions outside the scope of their Award of August 4. Clauses 8 and 9 deal with general points, the realisation of which will be likely to depend, in the main, on the actual working of the Constitution. The agreement also provides for a particular method of electing Depressed Class representatives for the Legislature at the Centre. This again, in the opinion of the Government, is a subject outside the terms of the Award. As the matter was under investigation as part of the whole scheme for election for the Legislature at the Centre, the authorities thought that no piecemeal conclusion could be reached. To prevent misunderstanding, it was explained that the Government regarded the figure 18 per cent. as the percentage

of British India general seats at the Centre to be reserved for the Depressed Classes as a matter for settlement between them and other Hindus.

The resulting arrangements did not satisfy large bodies of public opinion. The following excerpt from an amendment to the relevant portions of the J.P.C. Report proposed in the course of discussion in the Joint Committee, by the Marquess of Zetland and supported by among others, the Marquess of Salisbury, the Earl of Lytton, Lord Hardinge, Lord Derby, Lord Rankiellour and Sir Reginald Craddock throws light on some of the issues:—

Lord Zetland on the 'Award' & Pact before J. P. Committee

"The original Award was strongly criticised by more than one witness who appeared before us on the ground that it must operate inequitably in the case of Bengal; and it was urged that the disadvantages at which the caste Hindus would be placed under it would be greatly intensified as a result of the adoption of the Poona Pact. Particular objection was taken to the reservation of seats and the employment of separate communal electorates in a province in which the community in whose interest the reservation is made forms a majority of the population.

"The system was introduced at the time of the Minto-Morley Reforms of 1909 with a view to safeguarding the interests of minorities and in particular the Moslem Minority; and while, on general grounds, we may deplore the necessity for such a device we have reluctuantly come to the conclusion that in existing circumstances in India the necessity persists. We do not, therefore, propose to elaborate the objections which may be urged against the system as a whole. But it is one thing to concede separate communal electorates for the purpose of giving minorities reasonable representation in the various legislatures; it is an entirely different thing to employ the system for the purpose of conferring upon a majority community in any particular province a permanent majority in the legislature unalterable by any appeal to the electorate. Such a course has never hitherto been adopted . It was considered and rejected by the Statutory Commission, who declared that a claim submitted to them which in Bengal and the Punjab would give to the Moslem community a fixed and unalterable majority in the general constituency seats, was one which they could not entertain; 'it would be unfair', they

wrote, 'that Muhammadans should retain the very considerable weightage they now enjoy in the six provinces and that there should at the same time be imposed, in face of Hindu and Sikh opposition, a definite Moslem majority in the Punjab and in Bengal unalterable by an appeal to the electorate'. This is the position which will arise if the distribution of seats proposed in the White Paper for the Legislative Assembly of Bengal, is given effect to. The Legislative Assembly is to consist of 250 seats. Of these 51 are allotted to Special interests, leaving 199 general seats. Of these general seats 119 are to be reserved for Moslems leaving 80 for the Hindus. But under the terms of the Poona Pact 30 of these 80 seats are to be reserved for the so-called depressed classes, hereafter to be known as the Scheduled Castes, and the number of general seats open to the Caste Hindu is thus reduced to 50. It is probable that in the case of the 20 special interest seats which are open to Moslems and Hindus, the great majority will fall to the Hindus; but even if the Caste Hindus were to secure the whole 20 seats they would still be arbitrarily limited by Statute to 70 seats in a Legislative Assembly of 250. To restrict in this way the possible share in the Government of the Province, of the community which plays a predominant part in its intellectual and political life, seems to us to be both unwise and unfair. Before making our recommendations we have one further comment to make on the effect in Bengal of the Poona Pact. The object of reserving seats for the depressed classes should be in our view, to secure to the real depressed classes—that is to say the Sudras, or outcasts—a voice in the legislature. We believe that in Bengal the number of such people is small; and we fear that the result of extending the list of scheduled castes as proposed in the White Paper, will be to defeat the object in view, for it will not then be members of the real depressed classes who will be returned for the Scheduled Caste Seats, but members of the powerful Namasudra and Rajbansi Castes who experience no difficulty in getting returned to the legislature even now, without any reservation of seats at all, and whose interests are as much opposed to those of the untouchables as are the interests of the highest castes themselves.

Inequity of guarantee for majority community

Bengal under Poona Pact

"We need not recall the circumstances in which the so-called Pact was concluded. We do not think that those who were parties to it can be said to have been accredited representatives of the Caste Hindus or to have possessed any

mandate to effect a settlement. We think that the arrangements for the representation of the depressed classes contained in the original award of His Majesty's Government were preferable and we recommend their adoption.

"The effect of the changes which we propose in the scheme of the White Paper will be as follows:—

(1) To give to Moslems or to Hindus, whichever is the minority community in any particular province, the right to decide whether election in the case of the general territorial constituencies shall be by separate or by joint electorates;

(2) In the case of Bengal to allot the general territorial seats between Moslems and Hindus on a population basis; and

(3) To give to the Depressed Classes in all provinces the representation given to them by the Government under their original Award before it was modified by the Poona Pact.

Revision of 'Award'

"There is one other point to which we wish to refer. Under the provisions of the White Paper no change in the distribution of seats under the Communal Award is to be made during the first ten years during which the Constitution is in operation, and thereafter no proposals for modification will be taken into consideration which do not carry with them the assent of the communities affected. We think that it is unlikely that such assent will be given by a community entrenched in a position of statutory superiority in the legislature; and we recommend, therefore, that it should be open to either community at the expiration of ten years to petition Parliament to modify the Award."*

Discussion in Commons

The principles and details of the Communal Decision and the Poona Pact came up for a considerable amount of discussion in Parliament. A motion to restore the original 10 seats, as allotted in the Prime Minister's Decision, to the Scheduled Castes in Bengal, as against 30 seats as provided in the Poona Pact, moved by Mr. Lennox-Boyd, was vigorously supported by Sir Reginald Craddock, Colonel Wedgwood and the Duchess of Atholl. The Under-Secretary of State in reply reiterated the opinion of the Joint Committee

* *Proceedings*, Vol. I, Part II, p. 338 *et seq.*

that, if by agreement between the communities concerned, "some reduction were made in the number of seats reserved for the depressed classes in Bengal, possibly with a compensatory increase in the number of their seats in other Provinces where a small revision in favour of depressed classes would not be likely materially to affect the balance of the communities in the Legislature, we are disposed to think that the working of the new constitution in Bengal would be facilitated."* The motion was not accepted.

Scheduled caste seats in Bengal

Colonel Wedgwood moved to insert in the Fifth Schedule relating to the Composition of Provincial Legislatures: "Provided that the choice as between separate and general electorates for the election of representatives to the said chamber or chambers, shall be a matter for decision by the minority community, or communities, in each Province."

Introduction of general electorate

The mover explained that the proposed change merely puts in the proviso that should a minority community in any Province decide that they can be better protected by having votes in the general electorate instead of the separate electorate, then they should be able to forfeit their position as represented by the separate electorate and become part of the general electorate, so that the majority Government and the majority members would have to go to the minority for their votes and depend on the votes of the minority, to some extent, for their re-election. He cited the manner of dealing with the problem of minorities in South Africa and New Zealand and added: "From the point of view of protecting minorities, there is nothing in communal representation. The real difficulty in India is that the Mohammedans demand communal representation. They put forward the plea that communal representation is to protect them in Provinces where there is for all time a Hindu majority and that in face of the Hindu majority they have no chance unless they have communal representation. That plea I believe to be completely unfounded."

Minority and communal representation

Referring to the new electoral arrangements in Ceylon introduced by an Order-in-Council, which was drafted in accordance with the recommendation of a Commission presided over by Lord Burnham, Colonel Wedgwood said: "Ceylon is

* *Debates*, House of Commons, 10 May, 1935.

The new system in Ceylon

divided into even more warring castes than India. You have the Mohammedans there, the low caste Cingalese, the up-country Cingalese, the Indians, who occupy a great part of the north, and the Burghers, who are the half-caste descendants of the Dutch and Portuguese settlers, all demanding, as the Mohammedans are doing, separate electorates in order to secure some voice in Parliament. The Commission came to the very wise conclusion that it was essential that there should be a general list in the interests of the whole of Ceylon. There is a general electorate for the whole country, subject to the condition that Mohammedans and the Burghers have two votes, one on the general list and one on the separate list for their own community, so that their minorities are protected in both ways. They have the protection of having a separate electorate for their own representatives in the Ceylon Parliament and they have a vote on the general list, so that every candidate who stands for Parliament has to go to the coloured men, the Mohammedans and Cingalese, and ask for their votes, and his programme has to be made to meet their views. Therefore you have the coloured interest represented in the Parliament of Ceylon." He concluded by saying: "I dislike communal representation most of all, not because it divides India, as it does, for all time, not because it is a bad protection for minorities but because it is bad for our reputation throughout the world. Nobody will believe that we think that communal separate electorates are good for India. Nobody in any European country—they tried it in Austria before the War, and see what an explosion it produced in that country—who knows anything about this matter thinks that it is good for India. If we put it there it will merely mean that our name will suffer as well as the name of India."

Mr. Attlee in the course of his speech on this occasion said:

Mr. Attlee on the 'Award'

"After all, the communal award must be based on something more than mere expediency. The award was, to a great extent, weighted on behalf of the Moslems, and against the Hindus. I cannot see why the acceptance of this Amendment should be held as infringing the communal award in any degree. The purpose of the commnual award is to give to minorities a certain definite protection. If you give a minority the right to say, 'We will not accept this protection', I cannot see that you are infringing the award. The real vice

of communal electorates is that you tend to produce the super-communalist. Any inclusion of other electorates means that the extreme communalist must consider people of other communities."

Mr. Butler in replying pointed out that the suggestion on such lines by the Simon Commission met with very adverse reception by the Moslems. The amendment was negatived.*

Lord Strabolgi on communal electorates

In the House of Lords, Lord Strabolgi in raising the question of communal electorates in connection with the Schedule dealing with the composition of Provincial Legislatures pointed out that regarding the representation of the States there was no mention of communal electorates. He observed:

"The communal differences about which we hear so much now, were not very noticeable before the Montagu-Chelmsford reforms, and that, as has been described to me and to other noble Lords many times, when we were seeking to find an explanation, they have been made more acute by the scramble for loaves and fishes and that is the real explanation beneath the communal troubles.

"We were told it was necessary to make this Award by the former Prime Minister, now Lord President of the Council, Mr. Ramsay Macdonald, in August, 1932, because the different communities could not agree among themselves as to the fractional proportion of seats they were to have in these Provincial Legislatures we are now discussing. Was there any reason at all why we should give way to that kind of pressure? If they could not agree, was it for us to impose this division upon them, this which I am afraid will be a permanent division? I am speaking with the greatest seriousness. Could we not have told them to come back to us when they had agreed? Could we not, above all, insist on the common electoral roll?

The Future

"I would only point out that there is a most welcome movement in India amongst the younger men against this exploitation of communal feeling for political ends. Young Moslems, young Parsees and young Hindus are beginning to come together with the ranks of Congress and other political bodies. There is, I am informed, not much communal difference or feeling in the trades unions."†

* *Debates*, House of Commons, 8 May, 1935.

† *Debates*, House of Lords, 9 July, 1935.

Moslem demand for statutory guarantee

Early in July 1935, a demand was made by the All-India Moslem Conference, closely following the assumption of the office of Secretary of State for India by the Marquess of Zetland, asking that the assurance that the Government would not alter the 'Award' without the consent of the communities concerned be embodied in the Act. In connection with the discussion of what is now Section 308 of the Act, laying down the procedure for proposing amendments for consideration of Parliament, there was a debate on 8th July, 1935.

Sec. 308

It was suggested that in view of the fact that the provisions in the Bill could be interpreted by a future Government in Great Britain to imply that they would alter the provisions of the 'Award' even within ten years, words at the end of proviso (1), sub-section (4), section 308, to the effect that if without an address from the Legislatures concerned in India, action was proposed to be taken by His Majesty in Council, 'the views of the representatives in any such Legislatures of any minority likely to be so affected' should be ascertained. The proposal was supported by the Marquess of Lothian.

Lord Zetland's position

The Marquess of Zetland pointed out that the Bill provided for a report from the Governor-General or Governor on any such proposal. He, however, agreed to the proposed change, but, in this connection, observed: "I really do not see how the Governor-General or the Governor can give his opinion upon the effect which the proposed alteration would have upon minorities without ascertaining whether the minorities approve of it or not; but if there is doubt on that subject, I am quite willing to accept words such as those proposed by my noble friend behind me; or, at any rate, I am quite willing to consider words of that kind, because I agree it is essential that Parliament should know whether the minorities do or do not approve of any change which is proposed. As I have already said, no Governor-General will ever be left in doubt as to whether minorities approve or disapprove of a change of that kind which is proposed affecting their interest, because they very soon make their voices heard. I think the only way in which you can ascertain whether minorities wish a change

to be made, or whether they do not wish it to be made, is by listening to what they say.''*

Statutory security re: Communal proportions

The section, as finally amended, provides for the ascertainment of 'the views of the Governments and Legislatures in India who would be affected by the proposed amendment and the views of any minority likely to be so affected, and whether a majority of the representatives of that minority in the Federal or, as the case may be, the Provincial Legislature support the proposal',† both in the case where a Legislature in

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* *Debates*, House of Lords, July 6, 1935.

† When the Lords' Amendment was placed before the House of Commons the Duchess of Atholl (Con.) in approving the change observed : "When the Bill left us two months ago I felt extremely anxious in regard to this Clause, and I am considerably relieved to see the Amendments which have been inserted. As the Bill left us it would have been possible for the Government by Order-in-Council at any time after the Bill became law to propose the abolition of the special electorates and to be obliged only to ascertain the views of Governments and Legislatures, a very different matter from obtaining the assent of the communities concerned which was the pledge given in the Communal Award. It is a great satisfaction to me to see how both sub-section (1) and sub-section (4) of this Clause have been amended in another place..........These Amendments, therefore, do require something very like the assent of the communities, and what is very important, these requirements are not limited merely to the provincial Legislature but also extend to the Federal Legislature; and as the communal award contains no pledge that there should be no change in the method of election to the Federal Legislature except after 10 years, or with the assent of the communities —and the pledge of the communal award only extended to provincial Legislatures—it does seem to me to be a substantial concession to minorities that any change in the Federal Legislature that may be approved either by the Legislature itself or by His Majesty's Government will be subject to the same requirement of the views of the minorities concerned as in the case of the provincial Legislatures. I, therefore, sum up the Amendments by saying that it seems to me that while on the one hand it may be said that the Clause now does not give in regard to the provincial authorities quite all that

India presents an address in the matter and where the Government in Britain makes any proposal. This means that practically without the approval of a majority of members in a Legislature belonging to any minority,—as all minorities are likely to be affected by any change —no change shall take place. In view of the communal electorates returning the members and the likelihood of vested interests developing around them, the Lords' amendment bars the possibility of important changes, quickly and smoothly.*

Its significance

Mr. C. Y. Chintamani, ex-president of the Indian Liberal Federation and a veteran publicist criticises the communal distribution of seats as follows: †

"Judged by almost no test can I consider the so-called 'communal award' to be right or wise or just. I say 'so-called' because it is really the decision of His Majesty's Government taken on the recommendation or at least with the concurrence of the Government of India.‡

was originally promised, it does give substantially more than was promised in regard to the Federal Legislature." (*Debates*, House of Commons, July 30, 1935.)

* In the opinion of Mr. H. B. Lees-Smith the "cumulative result of giving a privileged position to Moslems, Sikhs, the depressed classes, the Princes and the rest has finally come back like a boomerang upon the Hindu nationalist leaders. Their followers are left on the general register, which now is represented by less than one-third of the members in the Federal Legislature. Even if the Nationalists sweep the whole register, they remain permanently a minority." (*Current History*, October, 1935.)

† *The Communal 'Award'? What it means to the future of the whole country*, pp. i-ii. (Published by M. N. Pandey, A.L.J. Press, Allahabad).

‡ That the communal 'Award' was, in fact, the decision of His Majesty's Government was acknowledged by Sir Samuel Hoare before the Joint Parliamentary Committee in reply to questions by Sir N. N. Sircar. He said that the Government had given their decision after the communities had failed to agree amongst themselves. He further said that whereas on other proposals in the White Paper, Government were prepared

"It is my deliberate and unalterable conviction that this communal award including and combined with the special representation of so many interests and functions, and aggravated by the arrangements made at Poona in September 1932, will make territorial, national or non-communal patriotism very difficult. Parties based upon opinion as distinct from religious belief or class interest will not be easy of organisation and development in legislative bodies whose members will own so many divided allegiances and no common loyalty to one supreme entity, The People. There will be so many groups with frequently changing permutations and combinations, that an Executive responsible to the Legislature and maintained in office by an organised majority with a common political and economic policy, will be hard to get. What is far more likely to happen is that ministers will be selected, each of whom, for reasons not necessarily related to public policy, will be able to command a certain number of votes, so that the aggregate so made up may suffice to keep the Ministry in office. And however it may misgovern or maladminister or betray incompetence or uptrustworthiness, it can hope to remain rooted in office unless and except when disappointed ambitions will lead to discontent among the faithful, culminating eventually, if it ever will, in open revolt.

"I forsee as a consequence of this astounding communal award, increased inter-communal tension outside and inside the legislatures and—the continuance of real power in the hands of our inescapable trustees of the I. C. S., headed by a Governor-General and Governors with many and important powers centered in them as authorities external and superior to the Governments responsible to their respective legislatures. The I. C. S. and its worse half the I. P. S. will be untouchable by the profane hands of mere elected vernacular ministers accountable to heterogenous legislatures. The Ministers may turn out to be smoke-

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to carry on discussion, upon the proposals contained in the communal decision 'the Government have said their last word'. (Q. 7474 & 7478, July 7, 1934).

screens from behind which the permanent officials of a ruling caste protected by Act of Parliament and not controllable by the Government which they serve beyond a limited degree, will act as they have all along done with unlimited faith in their own omniscience and with no superfluous respect for the knowledge or ability or wisdom of their nominal superiors."

APPENDIX D

Orders in Council re : Sind and Orissa

Sind and Orissa have been constituted as separate provinces as laid down in section 289 of the Act. Orders in Council relating to the constitutions were placed and approved by both Houses of Parliament, by 18 February 1936, in accordance with the provisions of Sec. 309 (1), and were agreed to by His Majesty. The changes have come into effect from the 1st of April, 1936.

CONSTITUTION OF SIND

An Advisory Council

Sind will henceforth mean the territory known at the date of the Order as the Division of Sind, and the boundaries of that Division shall be the boundaries of Sind. Until the inauguration of Provincial Autonomy with certain exceptions the existing arrangements in other Governors' Provinces according to the Act of 1919, shall apply. The Governor shall be appointed by His Majesty by warrant under the Royal Sign Manual, after consultation with the Governor-General, and there shall be paid to him an annual salary of sixty-six thousand rupees and such allowances as the Secretary of State in Council may determine. The Governor shall have no executive Council and the Governor shall be deemed for all purposes to be the local government of Sind.

There will be no Legislative Council during the transitional period. It is, however, laid down that there shall be an Advisory Council consisting of not more than twenty-five members to be nominated by the Governor and of those persons not more than three shall be officials. The Council may advise on all such matters as the Governor may refer to them. The business of the Council shall be conducted by the Council or its committees in such manner, and the Council and its committees shall be presided over by such persons, as

the Governor may direct. There shall be paid to the members of the Council such allowances as the Governor-General may determine.. The Governor may, if he thinks fit, appoint one or more members of the Advisory Council to assistant him in such manner as he thinks fit, and there shall be paid to any person so appointed such salary and allowances as may be fixed by the Governor-General in Council. Any such appointment shall be terminable at the pleasure of the Governor.

Legislation by Regulations

Regarding legislation, the procedure laid down in section 71 (1) (2) (3) (3A) of the Act of 1919 shall apply, i.e., the Governor-General in Council shall make regulations for the peace and good government of Sind, acting upon proposals of the local Government. It is provided with regard to the Budget that the Governor shall before or as soon as may be after the beginning of each financial year falling wholly or partly within the transitional period, cause a statement of the estimated annual receipts and expenditure of Sind for that year together with proposals for appropriation of the revenues of Sind to be laid before the Advisory Council for general discussion, but no item shall be submitted to the vote of the Council ; and after the discussion the Governor shall authenticate under appropriate heads the amounts of the appropriations, and thereupon expenditure may be undertaken accordingly.

If in any financial year further expenditure from the revenues of Sind becomes necessary over and above the expenditure authorised for that year, the Governor shall cause a supplementary statement showing the estimated amount of that expenditure to be laid before the Advisory Council.

Revenue Commissioner

There shall be a Revenue Commissioner for Sind who shall discharge such functions as the Governor may, with the previous sanction of the Governor-General in Council, from time to time assign to him, and any provision in force immediately before the 1st April, 1936, contained in or made under any enactment shall have effect accordingly. Any revenue appeals pending immediately before that date in relation to any matter in Sind shall be transferred to, and disposed of

by, such persons as the Governor may, with the previous sanction of the Governor-General in Council direct.

Regarding other matters the Governor may, from time to time, by notification in the local official gazette direct what officer (other than the Revenue Commissioner) is to exercise in Sind any functions exercisable by virtue of any provision in force immediately before the 1st April, 1936, contained in or made under any enactment, and any such provision shall have effect accordingly.

From the 1st April, 1936, the members in the Bombay Legislative Council representing constituencies in Sind shall vacate their seats and the number of elected members of the Council and the total number of members thereof shall be reduced to sixty-seven and ninety-five respectively.

Financial apportionment

There shall be an apportionment of assets and liabilities between Sind and the Presidency of Bombay, and that apportionment shall be made in accordance with the provisions contained in a Schedule to the Order.

Any dispute arising under the said provisions shall be referred to and decided finally by the Secretary of State in Council, or, after the inauguration of Provincial autonomy, by the Secretary of State. The Schedule referred to, among other things, provides that of the outstanding Bombay Irrigation Debt incurred before the first day of April, 1921, Rs. 27,496,384 shall be the debt of Sind and the remainder shall be the debt of Bombay on account of the Lloyd Barrage and Canals system.

Irrigation debt

In general, it is laid down that the benefit or burden of any assets or debts shall be attributed, as to 85 per cent. thereof to Bombay, and as to 15 per cent. thereof to Sind.

Effects on the Bombay Budget

The 1936-37 Budget estimates for Bombay reveal that the Presideny expects to benefit to the extent of Rs. 76 lakhs. The adjustment of the permanent assets will, however, throw an additional burden of Rs. 3 lakhs on Bombay, as Rs. 34 lakhs of Barrage borrowing for pensionary charges will remain with the Presidency.

CONSTITUTION OF ORISSA

The Constitution of the new province of Orissa is broadly similar to that of Sind. The areas comprised in the Province of Orissa as defined in the first Schedule to the Order, shall be:—

Area

1. That portion of the Province of Bihar and Orissa which is at the date of this Order known as the Orissa Division thereof.

2. Areas transferred from the Presidency of Madras:—

(i) The Ganjam Agency Tracts; (ii) The following areas in the non-Agency portion of the Ganjam district, viz., the taluks of Ghumsur, Aska, Surada, Kodala and Chatrapur, so much of the taluks of Ichapur and Berhampur as lies to the north and west of the line described in Part II of the schedule; (iii) So much of the Parlakimedi Estate as lies to the north and east of the said line; and (iv) Certain areas in the Vizagapatam district, *viz.,* the Jeypore (Impartible) Estate and so much of the Pottangi taluk as is not included in that state.

3. Areas transferred from the Central Provinces:—

(i) The Khariar Zamindari in the Raipur district; and (ii) The Padampur Tract in the Bilaspur district, that is to say, the detached portion of that district consisting of 54 villages of Chandrapur-Padampur estate and also of following 7 villages, namely, Kuhakunda, Badimal, Panchpudgia (Soda), Barhampura (Malguzari), Panchpuragia (Palsada), Jogni, and Thakurpali (Jogni).

A large part of this area, however, will come under the excluded and partially excluded category.

Advisory Council, Legislative procedure, etc.

The Advisory Council for Orissa is to consist of 20 members only. The powers of this council, the procedure regarding legislation and Budget, the duties of the Revenue Commissioner and the procedure relating to pending revenue appeals and 'other matters', are similar to those provided for in respect of Sind. The consequential changes in the Constitution of Bihar, Madras and the Central Provinces are detailed in the Second Schedule to the Order.

Changes in Judicial arrangements

Regarding changes in the judicial arrangements it is laid down that the High Court at Patna shall be the High Court for the whole of Orissa and shall—

(*a*) in respect of the areas transferred to Orissa from the

province of Bihar and Orissa, retain such jurisdiction as it had immediately before the appointed day;

(b) in respect of such areas in Orissa as, immediately before the appointed day, were under the jurisdiction of any other High Court, have such jurisdiction as that other High Court had immediaely before the appointed day and the jurisdiction of any such other High Court in any such area in any matter in which jurisdiction is by this paragraph given to the High Court at Patna shall cease.

(2) Nothwithstanding anything in sub-paragraph (1) of this paragraph—

(a) all proceedings pending in any such other High Court as aforesaid on the appointed day shall be continued in that Court;

(b) all proceedings with reference to any decree or order passed or made by any such other High Court shall, after the appointed day, be instituted in that High Court and not in the High Court at Patna:

Provided that any such other High Court as aforesaid may, if it appears to it that, having regard to any alteration of the boundaries affected by this Order, any case pending therein on the appointed day ought to be transferred to the High Court at Patna, direct that that case shall be so transferred, and it shall be transferred accordingly.

Subject to the provisions of the last preceding paragraph, the Governor-General in Council may, after consulting the local governments and High Courts concerned, give such directions as he thinks proper as to the disposal of any cases pending on, or shortly before, the 1st April, 1936, in any court acting for an area, any part of which is transferred by this Order to Orissa, and as to the courts in which proceedings by way of appeal or revision are to lie in cases decided by any such courts before that date.

Apportionment of assets and liabilities

The Third Schedule to the Order gives the details as to the apportionment of assets and liabilities between Bihar and Orissa,* Madras and Orissa and Central

Effect on Bihar Finances

* The effect on Bihar's finances, as revealed by the Finance Member in his Budget speech for 1936-37, would be that Bihar would lose Rs. 94 lakhs of revenue and would transfer to Orissa Rs. 90½ lakhs of expenditure. The Budget however provided for Rs. 11 lakhs of contributions to be received from Orissa, of which, Rs. 3,76,000 had been taken as revenue and

Provinces and Orissa. It has been estimated that Orissa's annual revenue will be about Rs. 126 lakhs only, for the present.

Transfer of public servants to new Provinces

In both the Orders it is provided that persons serving under the Crown as may be determined by agreement between the Governments of the Provinces concerned or in default of agreement, by the Governor-General in Council, may, notwithstanding anything in the terms of their appointments or their conditions of service, be required to serve in, or in connection with the affairs of Orissa or Sind, as the case may be.

Subventions to Sind and Orissa

Without, of course, prejudging the results of the enquiry by Sir Otto Niemeyer, Sir James Grigg announced in the course of his Budget speech on February 28, 1936, that subventions amounting to Rs. 108 lakhs for Sind and Rs. 50 lakhs for Orissa will be given to the new Provinces, in order that they might be in a 'position to carry on under the provisional regime.' Further, out of the anticipated surplus of Rs. 2,42 lakhs in 1935-36, Rs. 45 lakhs is to be allotted to 'a special fund for assisting Sind and Orissa to meet their expenditure on adaptation of the old and provision of the new official buildings'. Sind shall get Rs. 17½ lakhs only, and the reason for the apparent preference to Orissa, in this case, was ascribed to the existence of a considerable part of the buildings to be required by Sind.

Rs. 7,36,000 as a reduction of expenditure. As a result, Bihar expects to be better off by about Rs. 7½ lakhs after separation, the contributions being for the High Court, joint medical and educational institutions, leave and pension charges of joint Services, and Orissa's share of pensions already sanctioned and payable from Bihar revenue.

On Madras

The Madras Government also expects, in the final accounts for 1934-35, a reduction of about 20 lakhs of their deficit, as a result of the inclusion of portions of the Madras Presidency in the new Province of Orissa.

CHAPTER FIVE

FEDERAL GOVERNMENT

1. The Federal Executive

The executive authority of the Federation is to be exercised by the Governor-General on behalf of His Majesty. The Federation will be charged to pay a salary of Rs. 250,800 rupees, and other allowances to enable him to discharge conveniently and with dignity the duties of his office.* **Executive authority of Federation** Sec. 7

The executive authority of the Federation extends—

(a) to the matters with respect to which the Federal Legislature has power to make laws ; **Extent of executive authority**

(b) to the raising in British India on behalf of His Majesty of naval, military and air forces and to the governance of His Majesty's forces borne on the Indian establishment ; Sec. 8

(c) to the exercise of such rights, authority and jurisdiction as are exercisable by His Majesty by treaty, grant, usage, sufferance, or otherwise in and in relation to the tribal areas.

This authority, necessarily does not extend to legislation in matters specifically handed over to the Provincial Legislatures, and is limited, in the case of the States, to such matters as the Ruler has accepted as falling within the federal sphere by his Instrument of Accession. Moreover, the authority of the Federation regarding His Majesty's forces extends only to 'a subject of His Majesty or a native of India or of territories adjacent to India.'

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* The maximum salary under the Act of 1919, Schedule 2, is Rs. 256,000.

Provisions as to Instrument of Instructions

Sec. 13

The Governor-General will be required to exercise his functions according to the directions contained in the Instrument of Instructions. But the validity of anything done by the Governor-General shall not be called in question on the ground that it was done otherwise than in accordance with any Instrument of Instructions issued to him. The special procedure laid down in the Act of having Parliamentary sanction for the Instrument will make the Instrument of Instructions the chief method of any further development of the Indian Constitution. One such case is mentioned in the Joint Committee's Report. It is pointed out that if at some future date it seemed that, even in regard to a matter declared by the Act to be within the Governor-General's own discretion, Ministerial advice may be made mandatory, an amendment of the Instrument might secure it.

'Reserved' subjects

Sec. 11

The functions of the Governor-General with respect to Defence and Ecclesiastical Affairs and with respect to External Affairs, except the relations between the Federation and any part of His Majesty's dominions, shall be exercised by him in his discretion, and his functions in or in relation to the tribal areas shall be similarly exercised.

Appointment of Counsellors

To assist him in the exercise of these functions, the Governor-General may appoint Counsellors, not exceeding three in number, whose salaries and conditions of service shall be such as may be prescribed by His Majesty in Council. These Counsellors would be responsible to the Governor-General alone. Since it is necessary that the Governor-General should have a spokesman in the Legislature on matters

connected with the 'reserved' Departments, each Counsellor, observes the Joint Committee's Report, will be *ex-officio* an additional member of both the Chambers of the Legislature for all purposes though without the right to vote.

British Indian Memorandum on the control over Army policy

The subjects placed within the 'reserved' sphere have naturally called forth criticisms. Though the British Indian Delegation accept 'the necessity for the reservation, during a period of transition', of Defence, among other subjects, they note with regret that "in spite of the insistent demands of the Indian Delegates at the Round Table Conference for greater control over Army administration and the promise contained in the Prime Minister's declaration that the reserved powers will not be so framed and exercised as to prejudice the advance of India to full responsibility, the White Paper provisions relating to the Army, so far from giving Indians greater opportunities for influencing Army policy, actually make the constitutional position in some respects worse than at present. While at present the Governor-General and his Council, three members of which are Indians, 'superintend, direct and control' the military government of India, the Governor-General, assisted by a Counsellor appointed at his discretion, will in future solely determine Army policy. A direction in the Instrument of Instructions to encourage joint consultation between the Ministers and Counsellors is obviously no satisfactory substitute for the opportunities which the present statute affords to the Indian public of expressing its views through the Indian Members of the Executive Council. Past experience of the actual working of a similar direction to Provincial Governors as regards joint consultations between Executive Councillors and Ministers justifies this statement."

They urged, therefore, (1) that the Governor-General's Counsellor in charge of the Department of Defence should always be a non-official Indian, and preferably an elected member of the Legislature or a representative of one of the States ; (2) that the control now exercised by the Finance Member and the Finance Department should be continued ; and (3) that all

questions relating to Army policy and the annual Army budget should be considered by the the entire Ministry, including both Ministers and Counsellors ; though they admitted that in cases of difference the decision of the Governor-General must prevail. As to the first point, the Joint Committee is of opinion that the Governor-General's choice ought not to be fettered in any way, and he must be free to select the man best fitted in his opinion for the post. As to the second, they understand that the Military Finance and the Military Accounts Departments are at the present time subordinate to the Finance Department of the Government of India, and not to the Army Department. It seems to the Committee as a necessary corrollary of the reservation of Defence that both of them should be brought under the Department of Defence, since the responsibility for the expenditure which they supervise can only be that of the Governor-General. But the transfer, the Committee suggest, would not preclude an arrangement whereby the Federal Department of Finance is kept in close touch with the work of both these branches and they do not doubt that some such arrangement ought to be made. As to the third point, the Joint Committee endorse the proposal in the White Paper that the Governor-General's Instrument of Instructions should direct him to consult the Federal Ministers before the Army Budget is laid before the Legislature ; and so long as nothing is done to blur the responsibility of the Governor-General, it seems to the Committee not only desirable in principle, but inevitable in practice, that the Federal Ministry, and in particular, the Finance Minister, should be brought into consultation before the proposals for Defence expenditure are finally settled.*

Joint Committee on the proposals of the British Indian Delegation

* The Draft of the Instrument of Instructions to the Governor-General lays down thus : "And We desire that, although the financial control of Defence administration must be exercised by the Governor-General at his discretion, nevertheless the Federal Department of Finance shall be kept in close touch with this control by such arrangements as may prove feasible, and that the Federal Ministry and, in particular, the Finance Minister shall be brought into consultation before estimates of proposed expenditure for the service of Defence

Time limit for Indianisation of the Army

The demand for Indianisation of the Defence forces has been a recurring one for a considerable time. A time-schedule for securing its realisation had been urged before the sessions of the Round Table Conference. During the debate in the Committee stage a Labour member moved the insertion of a proviso laying down that "it shall be the duty of the Governor-General, in exercising his functions with respect to defence, to make provision for the progressive Indianisation of the defence forces with a view to the completion of this process within a period not exceeding thirty years, and thenceforth the Governor-General's function with respect to defence shall be exercised by him acting with his Ministers, and the special responsibility of the Governor-General in the exercise of his functions with respect to the prevention of any grave menace to the peace or tranquillity of India, or any part thereof, shall cease and determine."

In the course of his speech the mover observed: "I am fortified in the proposal that I am making because the Joint Select Committee suggested that the time would arise in five years from the passing of the Act for inquiring into the possibility of the Indianisation of the police service and the civil service of India. If such a proposal is good enough in respect of the police and the Civil Service in India, it ought to be good enough in respect of the defence forces of India. As I understand the position, it is this, that we have 60,000 soldiers from this country in India and they are officered exclusively by people from this country. There are over 140,000 men in the Indian Army, which is almost exclusively an Indian Army, and in the main it is officered by people from this country. Let hon. members see how anomalous the position is. The Indians in their own country are officered by British officers, but no Indian, so far as I know, has ever been allowed to secure a captaincy or even a sergeant-majorship in the British forces in India."*

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are settled and laid before the Federal Legislature. (Para. XIX.)

* Mr. Rhys Davids in the House of Commons, 28 February, 1935.

Sir Samuel Hoare's reply

Sir Samuel Hoare put the Government's point of view in the following words: "We have started a Sandhurst for the training of these Indian officers, and I am glad to be able to tell the Committee that the young Indians who have entered the Indian Sandhurst are, in the view of the Commander-in-Chief, showing great promise. We have to give this experiment the fairest and freest possible run. We are now making it over a wide field, extending to all the Arms in India and to sections of the Army that in former years were denied to Indian units and Indian officers. The more it succeeds the quicker will be the development of Indianisation. But more than that we cannot say. We cannot say that in a period of *x* years, in 20, 30, or 40 years or whatever it may be, this process is going to succeed or is going to be complete." He later observed that the draft Instrument of Instructions provides that the Governor-General shall "bear in mind the desirability of ascertaining the views of his Ministers when he shall have occasion to consider matters relating to the general policy of appointing Indian officers to Our Indian Forces or the employment of Our Indian Forces on service outsids India."

Proposal for having two Counsellors

The British Indian Delegation's Memorandum did not also favour the appointment of more than two Counsellors for three Reserved Departments, since the administration of Ecclesiastical affairs did not involve any appreciable work and could easily be entrusted to the Army Counsellor. They expressed their fear that if a third Counsellor was appointed and was placed in charge of the special responsibilities of the Governor-General, there was considerable risk of his developing into a super-Minister, whose activities might necessarily take the form of interference with the work of the responsible Ministers.*

Ecclesiastical Affairs

* The Labour Party objected to placing 'eccelesiastical affairs' within the 'reserved' category. Sir Samuel Hoare in reply said: "Speaking generally, the position to-day is that the expenditure of the ecclesiastical department covers, first, the chaplains for the Army, and, secondly, the chaplains for the Services where the Services need spiritual ministration. There was the question whether,

Regarding the administration of External Affairs, the Joint Committee observed that this should rightly be reserved to the Governor-General, if only because of the intimate connection between foreign policy and defence.* They

Scope of administration of External Affairs

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that being so, it was necessary to have a separate reservation of the ecclesiastical department, whether it could not be regarded as one of the branches either of the reserved defence department, or as part of the Army and the money voted for the service. On the whole, we thought it was better to deal with the ecclesiastical department as it is dealt with in the Bill. We have always made it clear that we did not contemplate the ecclesiastical department going over a wider field than we have described, namely, speaking generally, ministration for the Services and for the Army, and in order to show that is our view in Clause 33, Sub-section (3) (e) we give the limit of money that can be expended in the Department. We say that it shall not exceed 42 lakhs of rupees. As far as we can judge the expenditure is likely to fall rather than rise". Mr. Attlee in his alternative draft before the Joint Committee observed :—"While we are prepared to accept the proposition that so long as we have an Army in India their spiritual needs should be provided for, we cannot see why this can only or best be achieved by the proposal of the White Paper to retain the ecclesiastical department parmanently as a special reserved department of the Government of India. We think it would be very much better to abolish this department and include religious ministrations as an integral part of the Army administration. We would go further and propose that as long as we have an Army and Services in India whose spiritual needs are entirely different from those of the people amongst whom they serve, it would be a gracious act on our part if the necessary expenses were placed on British instead of on Indian revenues. We are in any event entirely opposed to this being included as a reserved department of the Government of India". (*Proceedings, Vol.* I, Part II, p. 275.)

Mr. Attlee's objections

* Mr. Cocks put the Labour point of view in this matter before the House of Commons as follows: "The only objection, as far as I know, that has ever been put forward to foreign affairs not being a reserved subject, is that the

further stated: "It was urged before us that the making of commercial or trade agreements with foreign countries was essentially a matter for which the future Minister for Commerce should be responsible rather than the Governor-General. In the United Kingdom, however, all agreements with foreign countries are made through the Foreign Office. Any other arrangement would lead to a grave inconvenience; but when a trade or commercial agreement is negotiated, the Foreign Office consult and co-operate with the Board of Trade, whose officials necessarily take part in any discussions which precede the agreement. We assume that similar arrangements will be adopted in India, and that the Department of External Affairs will maintain a close contact with the Department of Trade or Commerce; but we are clear that agreements of any kind with a foreign country must

sphere of defence is reserved, and that it is so intimately connected with the sphere of external affairs that, if the one is reserved, the other must be reserved also. I do not, however, see that that follows. It is true that the spheres of defence and external affairs are intimately connected, but so are other departments intimately connected with the sphere of defence—that of finance for example ; and, although the sphere of defence is a reserved department, it is not a secret department. The facts are known. The size and numbers of the Army, the striking power of the military forces, are well known to Ministers, and the Minister in charge of foreign affairs would know exactly and precisely how far he can go and in what direction he must not go. He would know exactly the relations between the defence of India and his own sphere. Moreover, the Commissioner in charge of the reserved department of defence would be closely associated and in touch with the Foreign Minister, as the Report says he should be." (*Debates*, House of Commons, 28 February, 1935).

be made by the Governor-General, even if on the merits of a trade or commercial issue he is guided by the advice of the appropriate Minister." It will thus be seen that the powers of the Governor-General, under this head, are very wide.

Sir Tej Bahadur's observation

Sir Tej Bahadur Sapru in his Memorandum raised other important issues in this connection. He suggested that there were certain matters which came under the domain of Foreign Affairs such as the appointment of commercial agents, consuls, trading agents, and which might easily be transferred to the Federal Ministry at the start. Further the reservation of the subject has resulted in certain limitations on the discussions in the Federal Legislature. Sir Tej Bahadur very properly observes: "Questions relating to tariffs or the position of Indians in foreign countries are so intimately connected at times with Foreign Affairs, that if the Legislature is altogether excluded from discussing Foreign Affairs, it might find itself at times unable to deal with those questions. Indian opinion is, as is well known, very much interested in tariffs, and the position of Indians overseas. In point of fact such questions can be discussed in the Legislature under the existing Constitution, and it would be in my opinion a distinct set-back if a discussion of them was barred out under the new Constitution. It would be a different thing if questions relating to peace and war between one country and another were treated on a separate footing, but it seems to me that to lay down a general provision to the effect that the discussion of Foreign Affairs will be absolutely outside the purview of the Legslature, is to impose a serious disability on it, and to affect its utility."*

Council of Ministers

Sec. 9

There shall be a Council of Ministers, not exceeding ten in number, to aid and advise the Governor-General in the exercise of his functions, outside the 'reserved' sphere, without,

* *Records*, Vol. III, p. 296.

however, in any way detracting from his power of exercising his discretion or individual judgment in any case where, by or under the Act, he is required to do so.* The Governor-General,

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* During the consideration in committee of the Bill by the House of Commons, Mr. H. Williams moved deletion of the following Sub-section (3) of Sec. 9:

"If any question arises whether any matter is or is not a matter as respects which the Governor-General is by or under this Act required to act in his discretion or exercise his individual judgment, the decision of the Governor-General in his discretion shall be final, and the validity of any thing done by the Governor-General shall not be called in question on the ground that he ought or ought not to have acted in his discretion, or ought or ought not to have exercised his individual judgment."

Mr. Williams observed: "Where there is a relationship between the Soverign and the Ministers here, the Sovereign acts on the advice of his Ministers, that is to say, the Sovereign does not act in his discretion and does not exercise his individual judgment so far as constitutional issues are concerned. But under the Constitution we are building up, there are three ways, apparently, in which the Governor-General may act. First of all there are cases described in the Measure where he makes his own decision, subject only, of course, to the provisions of any Instrument of Instructions issued to the Governor-General...The next case is where he asks his Ministers for their views, and having obtained them, he then takes his own decision. . . . Finally, there is the case where, presumably . . . . . the ministers are appointed, as will be seen in Sub-section (1) of this Clause, not merely to aid him, but to advise him. In these cases they are entitled to tender advice, as ministers here tender advice to the Soverign, and in that case the Governor-General is bound to take their advice, subject however, of course, to the provisions of Clause 12, where the question of the special responsibilities of the Governor-General arise. I do not know whether there exists in the world anything quite like this, except to the extent that it may be said to exist partially under the present system of Provincial Government."

in his discretion, may preside at meetings of the Council of Ministers.

Provisions as to Ministers

The Ministers are to be chosen and summoned by him and are to hold office during his pleasure. In order to ensure that Ministers are only recruited from amongst members of the Federal Legislature, from the States as well as British India, it is provided that no one can continue as a Minister if he is not a member of either Legislature for six consecutive months.* The salary of Ministers shall be determined by the Federal Legislature, but shall not be varied during the term of office of the Minister. The

Sec. 10

Defending the provision, the Under-Secretary of State for India declared: "The Sub-section is vital to the scheme on which the powers of the Governor-General and the relation of his Ministers is built up. It is essential in these matters of the relationship of the Governor-General to his Ministers that the discretion in these matters should rest with the Governor-General himself ; otherwise there would be great opportunities for confusion as to whether they fall within a reserved department or within his special responsibilities. For these reasons, we cannot accept the Amendment." (*Debates*, House of Commons, 28 February, 1935).

* Apart from the fact that the members from the States would not be elected, there is the possibility of a non-elected member being selected as Minister. Sir Samuel Hoare, after pointing out the unanimity of opinion against the inclusion of a non-parliamentary Minister amongst Indian delegates to the Round Table Conference as well as the Government of India and all the Provincial Governments, however, told the House of Commons: "It is possible for the Governor-General, if need be, to use one of his nominations for an appointment of this kind. A Minister has a period of six months before he need become a member of one or other of the Chambers. In the case of the Federal Legislature if he does not wish to stand for the Assembly he can obtain a nomination for a nominated seat in the Second Chamber. (*Debates*, House of Commons, 28 February, 1935).

salary of the first Ministry shall be determined by the Governor-General. No court shall have the competence to inquire into the advice, if any, given to the Governor-General by Ministers on any matter.*

Selection of Ministers

On the subject of Ministerial responsibility, the Draft Instrument to the Governor-General says: "In making appointments to his Council of Ministers Our Governor-General shall use his best endeavours to select his Ministers in the following manner, that is to say, in consultation with the person who, in his judgment, is most likely to command a stable majority in the Legislature, to appoint those persons (including so far as practicable representatives of the Federated States and members of important minority communities) who will best be in a position collectively to command the confidence of the Legislature. But, in so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers."†

Relation between Counsellors and Ministers

Regarding the relationship between the Counsellors and Ministers, the Draft contains the following instruction: "Although it is provided in the said Act that the Governor-General shall exercise his functions in part in his discretion and in part with the aid and advice of Ministers, nevertheless it is Our will and pleasure that Our Governor-General shall encourage the practice of joint consultation

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* Replying to points raised by Sir Stafford Cripps, the Attorney-General agreed that under Sec. 213, which empowers the Governor-General to consult the Federal Court, the Governor-General could also ask for opinion on matters affecting Ministerial advice. Further, there remained the safeguards of calling the action of the Governor-General in question in Parliament and of the reference by the Crown of any such matter to the Privy Council. None of these checks, however, is likely to strengthen the Indian Minister's point of view, and the provision is meant to bar his power of asking for a judicial interpretation. (*Debates*, House of Commons, 28 February, 1935).

† Para. VIII.

between himself, his Counsellors and his Ministers. And seeing that the Defence of India must to an increasing extent be the concern of the Indian people it is Our will in especial that Our Governor-General should have regard to this instruction in his administration of the Department of Defence ; and notably that he shall bear in mind the desirability of ascertaining the views of his Ministers when he shall have occasion to consider matters relating to the general policy of appointing Indian officers to Our Indian Forces, or the employment of Our Indian Forces on service outside India." *

Special responsibilities of the Governor-General

The Governor-General is required to exercise his individual judgment in relation to the following matters, which are his 'special responsibilities' :—

(*a*) the prevention of any grave menace to the peace or tranquillity of India or any part thereof ; **Sec. 12**

(*b*) the safeguarding of the financial stability and credit of the Federal Government ;

(*c*) the safeguarding of the legitimate interests of minorities ;†

* Para. XVII.

† The Draft Instrument of Instruction says on this point : "Our Governor-General shall interpret his special responsibility for the safeguarding of the legitimate interests of minorities as requiring him to secure, in general, that those racial or religious communities for the members of which special representation is accorded in the Federal Legislature, and those classes who, whether on account of the smallness of their number or their lack of educational or material advantages or from any other cause, cannot as yet fully rely for their welfare on joint political action in the Federal Legislature, shall not suffer, or have reasonable cause to fear, neglect or oppression. But he shall not regard as entitled to his protection any body of persons by reason only that they share a view on a particular question which has not found favour with the majority.

"Further, Our Governor-General shall interpret the said special responsibility as requiring him to secure a due proportion of appointments in Our Services to the several communi-

(*d*) the securing to, and to the dependants of, persons who are or have been members of the public services of any rights provided or preserved for them by or under the Act and the safeguarding of their legitimate interests ;

(*e*) the securing in the sphere of executive action of the purposes which the provisions with respect to discrimination, are designed to secure in relation to legislation ;

(*f*) the prevention of action which would subject goods of United Kingdom or Burmese origin imported into India to discriminatory or penal treatment ;

(*g*) the protection of the rights of any Indian State* and the rights and dignity of the Ruler thereof ; and

(*h*) the securing that the due discharge of his functions with respect to matters with respect to which he is by or under the Act required to act in his dicretion, or to

ties, and he shall be guided in this regard by the accepted policy prevailing before the issue of these Our Instructions, unless he is fully satisfied that modification of that policy is essential in the interest of the communities affected or of the welfare of the public." (Para. XI.)

* "Our Governor-General shall construe his special responsibility for the protection of the rights of any Indian State as requiring him to see that no action shall be taken by his Ministers, and no Bill of the Federal Legislature shall become law, which would imperil the economic life of any State, or affect prejudicially any right of any State heretofore or hereafter recognised, whether derived from treaty, grant, usage, sufferance or otherwise, not being a right appertaining to a matter in respect to which, in virtue of the Ruler's Instrument of Accession, the Federal Legislature may make laws for his State and his subjects." (Draft Instrument of Instructions to the Governor-General, para. XV.)

It should be noted that the procedure for the determination of the right of a State, in case of a dispute, rests with the Crown's Representative for the conduct of relations with the States.

exercise his individual judgment, is not prejudiced or impeded by any course of action taken with respect to any other matter.

Financial Adviser to Governor-General

In order to assist him in the discharge of his special responsibility for safeguarding the financial stability and credit of the Federal Government, provision is made for the appointment of a Financial Adviser by the Governor-General, after consulting his Ministers, who is to hold office during the Governor-General's pleasure. The advice of the officer will also be available, whenever consulted, to the Federal Government in any matter relating to finance. The principal duty of the Financial Adviser will be to assist the Governor-General in the discharge of his special responsibility for safeguarding the financial stability and credit of the Federal Government.* Sec. 15

* In this connection Mr. David Grenfell observed: "In this very important matter of the safeguarding of the financial stability and credit of the Federal Government, the Governor-General is the supreme authority. It is very difficult to say how far the Federal Government has any real power if the Governor-General has the right to withdraw from their control a matter of such great importance as the protection of the financial credit of the Government . . . . There is no indication in any way that this is a temporary safeguard."

Mr. Cocks went further and bluntly expressed his apprehension as follows: "This Clause means that Indian ministers must be governed by orthodox views on finance. It means that they may not adopt a policy which is objectionable to the banks, to the Reserve Bank of India or to the Bank of England. The Governor-General of India, who would not be a financial expert himself, would only intervene because the Reserve Bank of India would say, 'We do not agree with this: it is all wrong, and it will lead to disaster'. So it really means—I am sorry to bring in King Charles' head again—

Sir Tej Bahadur on financial safeguards

Sir Tej Bahadur in his Memorandum in repeating what he had mentioned in his joint note with Mr. Jayakar, submitted at the conclusion of the Third Session of the Round Table Conference, said: "It is somewhat difficult to define the scope of the expression 'financial stability and credit', but one may safely assume that it is sufficiently wide to cover the question of currency and exchange. The Financial Adviser, it will be noticed, will be responsible to the Governor-General, who will fix his salary, and that salary will not be subject to the vote of the Legislature. No term is provided for the continuance of this office, so that it is open to the Govenor-General to continue or discontinue this office in the exercise of his discretion."

On the Financial Adviser

Sir Tej Bahadur notes with satisfaction, that the Financial Adviser shall have no executive powers. He adds: "It is, however, not enough that, theoretically, the Financial Adviser should be an officer without executive power, but what is necessary is that every care should be taken that the Financial Adviser does not develop into a rival Finance Minister. Indian opinion is particularly sensitive on this point, as the experiment of a Financial Adviser was tried in Egypt, and there had the result, as pointed out by Mr. Young that Mr. Montagu Norman, besides being virtually King of England, will be virtually Emperor of India."

Later, Sir Stafford Cripps made the following statement regarding the financial adviser: "We do take a very strong objection to this appointment of someone whom the Right Hon. Gentleman describes as rather more than a watchdog, that is to say, handing over the whole control of the finances of India, and thereby the control of the Indian ministers, to someone who is not necessarily at all acceptable to those ministers. From our experience of the sort of financial adviser who has gone to different parts of the Empire in the not very distant past, it is probable that he will be the type of person who will try to curtail every social service because of his quite genuine belief in the very orthodox system of capitalist finance. Therefore, you will have a splendid method by which to shut down the whole of the effective work which might otherwise be done by the Indian ministers." (*Debates*, House of Commons, 28 February, 1935).

in his book *Modern Egypt,* that the Financial Adviser became in fact and in substance the Finance Minister. Again, Indian opinion would like to be reassured that the Financial Adviser (to be appointed would be a perfectly independent expert, and that he would not reflect any financial or political interests in England or in India."

British Indian Delegation on position of Financial Adviser

The British Indian Delegation observed: "We recognise that if the Governor-General is to have a special responsibility in respect of financial stability and credit, it will be necessary for him to have a Financial Adviser on the spot, for it is better that he should be guided by an adviser who is stationed in India and is in touch with local conditions than that he should be obliged to invoke the aid of experts in England who have had no direct or recent contact with India. We have, therefore, no objection to the appointment of an adviser for a limited period under the new Constitution, but it should be made clear either in the Statute or in the Instrument of Instructions, that the intention is that he should not interfere in any way in the ordinary day-to-day administration.

"We are further of opinion that there are considerable advantages in designating him Adviser to the entire Government, *i.e.* the Governor-General as well as the Ministry. (It is also very important that the Financial Adviser should be a financier approved by and acceptable to the Finance Minister). . . . If the Financial Adviser were chosen without the agreement of the Minister and did not enjoy his confidence, the latter would probably never consult him, however able and experienced he might be. The inevitable tendency would be for the Finance Minister to isolate himself, as far as constitutional provisions would permit, from the Financial Adviser, and the main object for which the appointment is considered necessary would be frustrated. On the other hand, if the selection were made with the approval of the Minister, he would probably get into the habit of consulting him and of accepting his advice without any prejudice to his constitutional right to reject it in cases in which he considered it necessary to do so."

Provision is also made for the appointment by the Governor-General of a person, qualified to be appointed a judge of the Federal Court, to be Advocate-General for the Federation.

Advocate-General for Federation

Sec. 16

It shall be the duty of the Advocate-General to give advice to the Federal Government upon such legal matters, and to perform such other duties of a legal character, as may be referred or assigned to him by the Governor-General, and in the performance of his duties he shall have the right of audience in all courts in British India and, in a case in which federal interests are concerned, in all courts in any Federated State.

The Advocate-General shall hold office during the pleasure of the Governor-General, and shall receive such remuneration as the Governor-General may determine, in the exercise of his individual judgment.

Besides every Minister, every Counsellor and the Advocate-General shall have the right to speak in, and otherwise to take part in the proceedings of, either Chamber, any joint sitting of the Chambers, and any committee of the Legislature of which he may be named a member, but shall not by virtue of this provision be entitled to vote. The powers and position of the Advocate-General are thus extended from the merely technical to the political arena.*

The Governor-General is authorised to make rules for the more convenient transaction

* As mentioned already, an amendment in the House of Lords, conferred this right on the Advocate-General. In the case of the Federation, though there is already the provision of Counsellors, it was argued that while they would be concerned with specific departments, the Advocate-General shall re-inforce the Governor-General's point of view in the Legislature, presumably against Ministerial advice.

of the business of the Federal Government and for the allocation of such business among Ministers. ✓The Act provides that the rules shall include provisions requiring Ministers and secretaries to the Government to transmit to the Governor-General all information with regard to the business of the Federal Government as specified in the rules, and particularly any matter under consideration by a Minister which involves, or appears likely to involve, any special responsibility of the Governor-General.* This provision leaves no loophole for any slackness in the vigilance over the Ministers.† **Conduct of Business** **Sec. 17**

* Provision is also made for the appointment of a special secretarial staff by the Governor-General (as by every Governor) 'in his discretion'. **Sec. 305**

† The following observations of Lord Rankeillour shows the extent of the powers with which the Governor-General is invested: "There are eighty occasions laid down of departure from ordinary constitutional practice. On eighty different occasions he is able to use his discretion entirely apart from his Ministers or else he has to consult his Ministers but need not follow their advice. I do not say this is not necessary, but see how enormously it adds to the complications of the position. Let me give one or two examples. Under Clause 9 he is given judicial powers; he may determine in certain cases the limits of his own jurisdiction. Under Clause 104 he may decide in certain cases whether the Federal or Central Legislature can deal with a new subject. Under Clause 11 he has protective powers in all sorts of important spheres. Under various clauses he has legislative powers by various clauses, he has legislative powers by various processes more or less summary. Then he has power of veto, to forbid legislation. He has power to restrict debate. He has enormously difficult problems of discrimination under Clause 111. He has what may be of intense importance and even danger, the prerogative of mercy, and under Clause 54 he has the ultimate power to direct the operations of all the Provincial Governments." (*Debates*, House of Lords, 19 June, 1935).

Moreover, power is given to the Governor-General to give directions as to the manner in which the executive authority in the Provinces is to be exercised in relation to any matter affecting the administration of a Federal subject.

Superintendence by Secretary of State

Sec. 14

The only check to the enforcement of his will seems to lie in the provision that in acting in his discretion or in exercising his individual judgment, the Governor-General shall be under the general control of and comply with such particular directions, if any, as may from time to time be given to him by the Secretary of State. This is bound to be the case so long as the Secretary of State is responsible to Parliament for Indian affairs.

Though the numerous safeguards have come in for a good deal of adverse comment, the Marquess of Lothian, in the course of an eloquent defence of the new Constitution, justifies the provision of safeguards, as called for in the peculiar circumstances of a vast country on the eve of a great experiment. In his opinion, the safeguards, "so far from being obstacles in the way of that successful discharge of the responsibilities of Government by the legislatures, which will make arrival at full Dominion Status rapid and inevitable,......may prove to be the curbstones and fences which prevent the coach of parliamentary Government from tumbling into the ditch during its early years."*

* *The Twentieth Century*: September, 1935.

2. The Federal Legislature

I

There shall be a Federal Legislature which shall consist of His Majesty, represented by the Governor-General, and two Chambers, to be known respectively as the Council of State and the House of Assembly. **Constitution of Legislature** **Sec. 18**

The Council of State shall consist of one hundred and fifty-six representatives of British India and not more than one hundred and four representatives of the Indian States, and the Federal Assembly shall consist of two hundred and fifty representatives of British India and not more than one hundred and twenty-five representatives of the Indian States. The Council of State shall be a permanent body not subject to dissolution, but as near as may be one-third of the members thereof shall retire in every third year in accordance with the provisions in that behalf. **Council of State**

Every Federal Assembly, unless sooner dissolved, shall continue for five years from the date appointed for their first meeting and no longer, and the expiration of the said period of five years shall operate as a dissolution of the Assembly. **Federal Assembly**

The representatives of the British Indian Provinces to the Council of State shall be elected directly, while the seats in the Federal Assembly allotted to British Indian Provinces shall be filled by a system of indirect election by members of the Provincial Assemblies. The seats allotted to the States in both the Houses shall be filled by nomination by the Rulers concerned. **Method of filling seats**

Persons appointed to fill a States' seat in the Council of State shall continue for periods varying from nine years, in the case of major States, to three years or even less ; and in the Federal Assembly until the dissolution of the Assembly. A seat in either Chamber alloted to a single state shall remain unfilled until the Ruler of that state has acceded to the Federation, and a seat in either Chamber which is the only seat therein allotted to a group of States shall remain unfilled until the Rulers of at least one-half of those States have so acceded. But so long as one-tenth of the seats in either Chamber remain unfilled by reason of the non-accession of a State or group of States, the nominees of the States which have acceded to the Federation may appoint persons not exceeding one-half of the number of seats so unfilled to be additional members of that Chamber for a period of one year only.*

Controversy over method of election : White Paper Proposals

According to the White Paper proposals, the British Indian members to the Assembly were to be directly elected. The Upper Chamber, or the Council of State, would consist of a maximum of 260 members, of whom 100 were to be appointed by the Rulers of the State-members of the Federation, and the British Indian Members, 150 in number, would, for the most part, be elected by the members of each Provincial Legislature by the method of the single transferable vote. An exception would be made in the case of those minorities (Europeans, Anglo-Indians and Indian Christians) whose representatives in the Provincial Legislatures would be insufficient in number to provide the necessary quota

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* *Vide,* First Schedule to the Act. Part II of the Schedule gives the details of the allocation of seats to the States. The distribution of British Indian seats is given as an Appendix to this Chapter.

to secure representation in the Upper Chamber. Except for these three minorities, the specific allocation of seats on a communal basis would thus be avoided. The White Paper stated that it was the intention of His Majesty's Government that the Muslims should be able to secure one-third of the British seats in the Upper House; and if it was considered that the adoption of proportional representation in the manner proposed made insufficient provision for this end, they were of opinion that modification of the proposals should be made to meet the object in view. In addition, the Governor-General would be empowered to nominate not more than ten members (not officials), thus providing an opportunity of adding to the Chamber a small group of the elder-statesman type.

The Joint Committee recommended a complete reversal of the present system of the constitution of the Central Legislature.* Although aware of the fact that direct

* Though recommended by the Southborough Committee, the Joint Committee of 1919 which considered the Bill relating to the Montagu-Chelmsford Reforms very wisely rejected the method of indirect election : the Simon Commission's move in favour of it was disapproved by the Lothian (Indian Franchise) Committee in 1932, as it was clear that public opinion in India was overwhelmingly in favour of direct election. Even on the present occasion not only did the British Indian Delegation strongly object to it, but some members of the Committee, with undoubted first-hand knowledge of Indian conditions, *viz.*, Lord Reading, Lord Lothian, and Messrs. Morgan Jones, Cocks and Foot also put in a very reasoned plea against the reversal of a system "which has already been in operation for the Indian Legislative Assembly not unsuccessfully for thirteen years and which has the support of the great majority of Indian leaders".

It is also interesting to note that the Lothian Committee and the five dissentient members of the Joint Committee regard indirect elections as uncalled-for, at least with the limited extension of the franchise, which has been proposed. So long as adult franchise was not being proposed, and it should be noted that the Joint Committee's proposals curtailed

J. P. C. support to indirect system for both Houses

election had the support of Indian opinion and was strongly advocated by the British Indian Delegation, they recommended the constitution of *both* the Houses by means of a system of indirect election, nevertheless they were constrained to recommend the system as being open to future review.

Arguments against indirect system

the franchise advocated by the Lothian Committee by more than forty per cent, the problem of dealing with astronomic numbers would not arise. With 250 members from British India for the Assembly, the number of electors ought not to exceed 30,000 to 40,000 in each constituency, and the average rural constituency will not exceed 6,000 to 12,000 square miles, and as the Lothian Committee pointed out, "these constituencies will be one-half the size of the constituencies which have thitherto elected to the present Assembly". Constituencies of immense area and containing enormous number of voters are inherent in large-scale federations, and in the United States, Canada and Australia have been in existence without impairing the system of representative government. In the United States of America the number of members of the House of Representatives is 435, or one for every 6,958 square miles and 282,241 of the population. The contact with the constituency, moreover, is already easier with the increasing facilities for communication and will become "more manageable in proportion as the whole population becomes educated, as broadcasting becomes universal and as transport facilities and arrangement for public meetings improve". It seems most illogical to have neglected education so long and to make that a ground for introducing a method of election, which in the case of India particularly will open the flood-gates of corruption and intimidation on the one hand and on the other make for conservatism and render control by Indian and foreign vested interests so easy. The proper and only course is to remove all obstacles to further extensions of the franchise.

The group headed by Lord Reading, who objected to reversing the White Paper proposal of direct election to the Lower House, pertinently observed that election by the Provincial Councils, and that also in *communal* groups and not by the single transferable vote system which the Simon Com-

Reasons for change of Government attitude

With reference to the change, Sir Samuel Hoare in his Memorandum to the Committee said: "Two considerations have weighed with me in reaching a different conclusion from the plan as proposed in the White Paper. In the first place, I feel strongly that only further experience of political forces and machinery in India will provide the material upon which can be based a final answer as to the best method of giving effect to the representative principle. It would be likely to become more and more, rather than less, difficult with a lapse of time which is bound to be accompained by a lowering of the franchise. The ultimate solution may be on the lines of the group system, but whatever the final solution may prove to be I am convinced that it would be easier to approach it from a system of indirect election rather than from direct.

"I have come to this conclusion with less hesitation in view of the proposals which will provide the Indian Legislature, in due course, with constitutional means of making its views on this subject known to Parliament."*

British Indian Memorandum

The British Indian Delegation met the principal objections to direct election in their Memorandum. In support of their demand for a continuance of the present system they quoted from the Government

mission wanted, would mean that "the provinces in effect, will be able to control the Central Legislature and therefore the Ministry. In the second place, the system inevitably involved the confusion of provincial and all-India issues at times of election with bad results for both central and provincial legislatures . . . . In the third place, the system inevitably opens the door to corruption for it means that each member of the central legislature, which will deal with matters vitally affecting business and finance, will be elected by a number of provincial electors on the average not more than 7 or 8 in the number". The system, to say the least, would "aggravate the tendency to provincial separatism which already exists and endangers the Unity of India". It would, further, create communalism in the most parochial form in the central legislature and rob the essence of national representation.

* Memorandum by the Secretary of State for India August 2, 1934) on the Federal Legislature. (*Records*, Vol. III, p. 366.)

of India's Despatch on the Report of the Statutory Commission which testified to the fact that the central elector had exercised the franchise with increasing readiness and at least as freely as the elector to provincial councils. A great deal of the business of the central legislature, the Despatch stated, was as intimate to the elector, and was as fully within the scope of his understanding as the business of the Provincial Councils. Secondly, the electoral methods natural to the social structure of India may be held to some extent to replace personal contact between candidate and voter, a contact which adult suffrage and party organisations make increasingly difficult in Western countries. The Despatch added: "The Indian electorate is held together by agrarian, commercial, professional and caste relations. It is through these relations that a candidate approaches the elector, and in this way political opinion is the result partly of individual judgment, but to a greater extent than elsewhere of group movements. These relations and groups provide in India a means of indirect contact between voter and member, reducing the obstacles which physical conditions entail. The Assembly, in part, perhaps, because it is directly elected, has appealed to the sentiment of India, and sown the seeds, as yet only quickening, of real representation."*

Government of India Despatch

Direct election to Upper House only approved

As a result of criticisms, though the Government stuck to the Joint Committee's proposals in the House of Commons, the Marquess of Zetland accepted the principle of an amendment sponsored by the Marquess of Linlithgow urging direct elections to the Council of State.†

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* *Records*, Vol. III, p. 217.

† Lord Linlithgow said that he did not think that the objections against the system of indirect elections applied in the same degree, or indeed in any formidable degree, in the case of the narrower franchise which he suggested for the Upper House at the Centre under the system of direct election. He thought that substantial advantage might be expected to flow from a plan which would give for the Upper House a different method of elections to that to be applied to the

The Marquess of Zetland moved consequential changes in the First Schedule, dealing with the composition of the Federal Legislature.

Distribution of seats in the Council of State

With the abolition of the system of indirect election based on the principle of proportional representation and the substitution for it of direct election, it became necesary to lay down the proportions in the Council of State which are to be allotted to the different communities. The total number of British Indian seats is 150. Of that number 75 are to be general seats. The number allotted to the Scheduled Castes is

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Lord Linlithgow's plan

Lower House. He added : "Great force is added to this consideration when one remembers that many of the Provincial Upper Houses will be newly constituted for the first time, that they will be manned by persons with little or, perhaps, no experience of Parliamentary life, and of course that particular difficulty also applies to those Provinces in which electoral colleges, created *ad hoc*, are to take the place of Second Chambers, since, under the Bill no Second Chambers in those Provinces will exist."

Archbishop of Canterbury

In supporting, the Lord Archbishop of Canterbury said : "that the rejection of the plan of direct election caused more missgiving, disquiet and disappointment, even among those who might have been friendly in India, than anything else in the Bill, except possibly those misunderstandings about Dominion Status . . Other considerations were brought to our attention—the characteristics of the new life in India, the infinitely greater power of the vernacular Press covering large areas in India, and, which was rather surprising, the extended use of the wireless. These innovations had entirely changed the whole condition of things, making contact between constituency and member possible which would have been entirely impossible otherwise . . . . The object of the Federal Legislatures is partly to watch the centrifugal or dangerous tendencies of the Provinces and keep All-India interests to the front, and there will be the tendency inevitably to send men to the Federal Legislatures pledged to particularist Provincial policies, to the opportunities offered under the system presented in the Bill to small groups in the Provincial Legislatures 'jerry-mandering' the elections so as to give rise to a great deal of most undesirable corruption." (*Debates*, House of Lords, July 2, 1935.)

six, in order to 'give each major Province, where the Scheduled Caste question is of real importance, one representative in the Council of State.' Sikhs have been allotted four seats, 'as a result of a calculation of the number of seats, which they would have secured under the system of proportional representation.' The Moslems are given forty-nine seats, 'in accordance with a general undertaking which was given to the Moslem community first of all at the First Round Table Conference, but an undertaking which has been repeated on a number of occasions since, that approximately one-third of the seats in the Council of State which are open to election would be secured to them.' The six seats allotted to women were 'really granted as a concession by the Government to representations which were made to them in another place.'* Upon the first constitution of the Council of State persons shall be chosen to fill all the seats allotted to Governors' Provinces, Chief Commissioners' Provinces and communities, but, for the purpose of securing that in every third year one-third of the holders of such seats shall retire, one-third of the persons first chosen shall be chosen to serve for three years only, one-third shall be chosen to serve for six years only and one-third shall be chosen to serve for nine years, and thereafter in every third year persons shall be chosen to fill for nine years the seats then becoming vacant.

Indirect election retained for certain communities

Indirect election is retained for the representatives of the Anglo-Indian, European and Indian Christian communities. Their representatives are to be chosen by the members of Electoral Colleges consisting of such Anglo-Indians, Europeans and Indian Christians, as the case may be, as are members of the Legislative Council of any Governor's Province or of the Legislative Assembly of such a Province.

Representation of States

The representatives of the States in the Council of State are to be appointed by the Rulers of the States concerned. The allocation among the States, Estates and Jagirs, numbering over 600, which constitute the non-British

* *Debates*, House of Lords, July 10, 1935.

portion of India, of the 104 seats available for the States as a whole, presented a rather complex problem. Discussion between the Governor-General and the Rulers resulted in the formula that in the allocation of seats among the States in the Council of State account should be taken of the relative rank and importance of the State as indicated by the dynastic salute and other factors.

Composition of Assembly

The distribution of the British Indian seats in the Assembly is on a communal basis; the Hindu, Mahomedan and Sikh seats will be filled by the representatives of those communities in the Provincial Assemblies* voting separately

Criticism of Zetland proposals

*The arrangement, of course, was very adversely criticised by certain members in both the Houses of Parliament. The Marquess of Salisbury asked: "In the altered circumstances, now that the Upper House, the House of Lords, is to be the democratic body, and the House of Commons is to be the Select Body, which Chamber will have the power of turning the Government out, because that is what responsible government means? It has no meaning at all except that the popular the Government out, because that is what responsible government." (*Debates,* House of Lords, July 10, 1935). Sir Austen Chamberlain asked: "Did any one ever hear of a constitution in which the lower house is to be elected indirectly because of the vastness of the constituencies, and the upper house to be elected directly but on the condition that the number of the electors was strictly limited to fit that system of election; in which the Chamber which is direct should be indissoluble while the Chamber which is indirect should be dissoluble?" (*Debates,* House of Commons, July 30, 1935). A writer in the *Round Table* (September, 1935) observed: "It will certainly be a peculiar position in which an Upper House elected on a very restricted franchise should be the sole vehicle of what is generally considered the democratic force of direct election. Judged by pure political theory the system is topsy-turvy." The writer forecasts that the system will operate even more as a spur to renew the demands for direct election to the Lower House.

for a prescribed number of communal seats. Within the Hindu group special arrangements are to be made for the Depressed Classes. In addition there are to be seats for Europeans; Anglo-Indians; Indian Christians; representatives of commerce and industry; Landholders; representatives of labour; Women and Sikhs.

Method of election by different groups

Seats in the Federal House of Assembly allotted to Europeans, Anglo-Indians, Indian Christians and women are to be filled by the representatives of these groups in the Provincial Assemblies voting in *ad hoc* electoral colleges. Persons to fill the seats allocated to representatives of commerce and industry, landholders and representatives of labour are to be chosen—

(*a*) in the case of a seat allotted to a Province, which is to be filled by a representative of commerce and industry, by Chambers of Commerce and similar associations ;

(*b*) in the case of a seat allotted to a Province, which is to be filled by a landholder, by landholders voting in territorial constituencies ;

(*c*) in the case of a seat allotted to a Province which is to be filled by a representative of labour, by labour organisations ;

(*d*) in the case of one of the non-provincial seats which are to be filled by representatives of commerce and industry, by Associated Chambers of Commerce ; in the case of another such seat by Federated Chambers of Commerce and in the case of a third such seat by commercial bodies in Northern India ;

(*e*) in the case of the one non-provincial seat which is to be filled by a representative of labour, by labour organisations.

State representation on population basis

Allocation of seats in the Federal House of Assembly among the States is to proceed on the principle that the number of seats allotted to each State or group of States should be proportionate to their population.

No person is to be appointed as a representative of a State in either Chamber of the Federal Legislature unless he—

(*i*) is a British subject or the Ruler or a subject of an Indian State which has acceded to the Federation; and

(*ii*) is, in the case of a seat in the Council of State, not less than thirty years of age and, in the case of a seat in the Federal Assembly, not less than twenty-five years of age. Restrictions on age are not to apply to a Ruler who is exercising ruling powers.

II

There are provisions similar to those already detailed in relation to the Provincial Legislatures, relating to the sessions of the Federal Legislature, the right of the Governor-General to address and send messages to the Chambers, the officers of the Chambers, quorum, and the oath of all allegiance. **Secs. 19, 20, 22, 23, 24**

Position of Counsellors and Advocate-General

As already mentioned, the Counsellors to the Governor-General in relation to reserved subjects, and the Advocate-General are entitled to speak in, and otherwise to take part in the proceedings of *either* Chamber, any joint sitting of the Chambers, and any committee of the Legislature of which they may be named members, but shall not by virtue of this section be entitled to vote. **Sec. 21**

There are also provisions similar to the Provincial ones regarding vacation of seats, disqualifications of members,* penalty for improperly sitting or voting as a member of either Chamber, privileges of members, and their salaries and allowances. Restrictions similar to those in the Provincial Legislatures are placed on discussions in the Federal Legislature. In the section dealing with the framing of rules of procedure, besides the three matters reserved also for the prior consent of **Secs. 25-29** **Sec. 38**

* It is, however, added that a person shall not be deemed to hold an office of profit under the Crown by reason only that while serving a State, he remains a member of one of the services of the Crown in India and retains all or any of his rights as such.

the Governor, the prior consent of the Governor-General, in his discretion, will be required for the discussion of, or the asking of questions on, any action taken in his discretion by the Governor-General in relation to the affairs of a Province.

Legislative procedure

The provisions regarding procedure in regard to legislation in the Federal sphere, financial and otherwise, are closely identical with the legislative procedure laid down for the Provinces. With regard to joint sittings, however, it is laid down that if after a Bill has been passed by one Chamber and transmitted to the other Chamber—

Joint sittings

Sec. 31

(*a*) the Bill is rejected by the other Chamber ; or

(*b*) the Chambers have finally disagreed as to the amendments to be made in the Bill ; or

(*c*) more than six months elapse from the date of the reception of the Bill by the other Chamber without the Bill being presented to the Governor-General for his assent ;

the Governor-General may, unless the Bill has lapsed by reason of a dissolution of the Assembly, notify the Chambers, by message if they are sitting or by public notification if they are not sitting, of his intention to summon them to meet in a joint sitting for the purpose of deliberating and voting on the Bill. If however, it appears to the Governor-General that the Bill relates to finance or to any matter which affects the discharge of his functions in so far as he is required to act in his discretion or to exercise his individual judgment, he may summon a joint sitting, even though the above conditions have not been fulfilled, if he is satisfied that there is no reasonable prospect of the Bill being presented to him for assent without undue delay.

Where the Governor-General has notified his intention of summoning a joint sitting, neither Chamber is to proceed further with the Bill. If at the joint sitting the Bill, with such amendments if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Chambers present and voting, it is to be deemed to have been passed by both Chambers.

When a Bill has been duly passed by the Chambers, the Governor-General may assent in His Majesty's name or may withhold his assent or may reserve the Bill for the signification of His Majesty's pleasure; or he may return the Bill to the Chambers with a message requesting them to reconsider the Bill or any specified provisions of it and, in particular, the desirability of introducing any such amendments as he may recommend in his message. It is to be the duty of the Chambers to reconsider the Bill accordingly.

Assent to Bills

Sec. 32

A Bill reserved for the signification of His Majesty's pleasure is not to become an Act of the Federal Legislature unless and until, within twelve months from the day on which it was presented to the Governor-General, the Governor-General makes known by public notification that His Majesty has assented to it. As in the case of provincial laws the Crown of course retains the right of disallowing any Act assented to by the Governor-General under the same stipulation regarding a time-limit of twelve months.

Power of Crown to disallow Acts

Certain extra-territorial powers are conferred upon the Federal Legislature by the provision that no Federal law shall, on the ground that it would have extra-territorial operation, be deemed to be invalid in so far as it applies—

Extra-territorial operation of Federal laws

Sec. 99

(*a*) to British subjects and servants of the Crown in any part of India ; or

(*b*) to British subjects who are domiciled in any part of India wherever they may be ; or

(*c*) to, or to persons on, ships or aircraft registered in British India or any Federated State wherever they may be ; or

(*d*) in the case of a law with respect to a matter accepted in the Instrument of Accession of a Federated State as a matter with respect to which the Federal Legislature may make laws for that State, to subjects of that State wherever they may be ; or

(*e*) in the case of a law for the regulation or discipline of any naval, military, or air force raised in British India, to members of, and persons attached to, employed with or following, that force, wherever they may be.

III

J. P. C. on nature of Federal Budget

Regarding procedure in financial matters, the Joint Committee mention three heads of expenditure which it is proposed should not be submitted to the vote of the Legislature, and which necessarily have no counter-part in the Provinces. These are (1) expenditure for a Reserved Department; (2) expenditure for the discharge of the functions of the Crown in and arising out of its relation with the Rulers of Indian States; and (3) expenditure for the discharge of the duties imposed by the Constitution Act on the Secretary of State. "The inclusion of the first," the J. P. C. Report continues, "necessarily follows from the reservation of administration and control to the Governor-General. The second would include the expenses of the Political Department and other matters connected with the rights and obligations of the Paramount Power. We understand the third to refer to such matters as expenditure in connection with the Secretary of State's establishments in London, liabilities incurred by him on contracts or engagements to which he is or will become a party under the provisions of the Constitution Act, and payments of com-

pensation to members of the Public Services under his powers in that behalf."

Annual financial statement

Sec. 33

The Act lays down that the Governor-General shall in respect of every financial year cause to be laid before both Chambers of the Federal Legislature a statement of the estimated receipts and expenditure of the Federation for that year, referred to as the annual financial statement.

The estimates of expenditure embodied in the annual financial statement shall show separately :—

(*a*) the sums required to meet expenditure described by the Act as expenditure charged upon the revenues of the Federation ; and

(*b*) the sums required to meet other expenditure proposed to be made from the revenues of the Federation, and shall distinguish expenditure on revenue account from other expenditure and indicate the sums, if any, which are included solely because the Governor-General has directed their inclusion as being necessary for the due discharge of any of his special responsibilities.

The following expenditure shall be expenditure charged on the revenues of the Federation :—

(*a*) the salary and allowances of the Governor-General and other expenditure relating to his office for which provision is required to be made by Order in Council ;

(*b*) debt charges for which the Federation is liable, including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt ;

(*c*) the salaries and allowances of ministers, of counsellors, of the financial adviser, of the Advocate-General, of Chief Commissioners, and of the staff of the financial adviser ;

(*d*) the salaries, allowances, and pensions payable to or in respect of judges of the Federal Court, and the

pensions payable to or in respect of judges of any High Court ;

(*e*) expenditure for the purpose of the discharge by the Governor-General of his functions with respect to defence and ecclesiastical affairs, his functions with respect to external affairs, in so far as he is, by or under this Act required in the exercise thereof to act in his discretion, his functions in or in relation to tribal areas, and his functions in relation to the administration of any territory in the direction and control of which he is under this Act required to act in his discretion: provided that the sum so charged in any year in respect of expenditure on ecclesisastical affairs shall not exceed forty-two lakhs of rupees, exclusive of pension charges ;

(*f*) the sums payable to His Majesty under the Act out of the revenues of the Federation in respect of the expenses incurred in discharging the functions of the Crown in its relations with Indian States ;

(*g*) any grants for purposes connected with the administration of any areas in a Province which are for the time being excluded areas ;

(*h*) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal ;

(*i*) any other expenditure declared by the Act or any Act of the Federal Legislature to be so charged.

Procedure regarding estimates in Legislature

Sec. 34

Any question whether any proposed expenditure falls within a class of expenditure charged on the revenues of the Federation shall be decided by the Governor-General in his discretion. Items of expenditure so charged upon the revenues of the Federation are not to be submitted to the vote of the Legislature. It is, however, enacted that this provision is not to be construed as preventing the discussion in either Chamber of the Legislature of any of such estimates, other than those concerned with the salary and allowances of the Govenor-General and the sums and allowances of the Governor-General and the sums payable to His Majesty out of the revenues of the Federation

in respect of expenses incurred in discharging the functions of the Crown in its relation with Indian States.

Special provisions as to Finance Bills

All other estimates are to be submitted in the form of demands for grants to the Federal Assembly and thereafter to the Council of State. No demand for grant, however, is to be made except on the recommendation of the Governor-General. In accordance with the principle that no proposal for the imposition of taxation or for the appropriation of public revenues, nor any proposal affecting or imposing any charge upon those revenues, should be made otherwise than on the responsibility of the Executive, a Bill or amendment making provision— **Sec. 37**

(*a*) for imposing or increasing any tax ; or

(*b*) for regulating the borrowing of money or the giving of any guarantee by the Federal Government, or for amending the law with respect to any financial obligations undertaken or to be undertaken by the Federal Government ; or

(*c*) for declaring any expenditure to be expenditure charged on the revenues of the Federation, or for increasing the amount of any such expenditure ;

is not to be introduced or moved except on the recommendation of the Governor-General ; and a Bill making such provision is not to be introduced in the Council of State.

Relative powers of two Houses

According to the Act, either Chamber is to have power to assent to or refuse a demand, or to assent to a demand subject to a reduction of the amount specified in it. Where, however, the Assembly have refused to assent to a demand, that demand is not to be submitted to the Council of State unless the Governor-General so directs; and where the Assembly have assented to a demand subject to a reduction **Sec. 34**

of the amount specified in it, a demand for the reduced amount only is to be submitted to the Council of State, unless the Governor-General otherwise directs. If the Chambers differ with respect to any demand, the Governor-General is to summon the two Chambers to meet in a joint sitting for the purpose of deliberating and voting on the demand as to which they disagree; and the decision of the majority of the members of both Chambers present and voting, is to be deemed to be the decision of the two Chambers.

Criticism of co-equal financial powers

In an able Memorandum to the Joint Committee, Lord Rankeillour said that, "the idea . . . . that the Council of State should be empowered, even provisionally, to restore grants struck out by the Legislative Assembly is completely foreign to our Constitutional notions as to the functions of an Upper House."*

Sir Tej Bahadur's views

Sir Tej Bahadur Sapru also stated in his Memorandum that he could not agree to the Upper Chamber exercising co-equal powers in the matter of supply. Apart from the fact that the participation of the Upper Chamber in the matter of supply would probably be wholly opposed to British Parliamentary practice, and the existing arrangement in India, Sir Tej Bahadur pointed out that the Lower Chamber itself, according to the proposed constitution, would consist of $33\frac{1}{3}$ per cent. of representatives of the Indian States, who would, so far as he could see, for some time to come, not be popular representatives coming through the open door of election, and the Upper Chamber would consist of two classes of representatives, namely British Indians, who would be elected by the Provincial Legislatures, and representatives of the Indian States who would constitute a nominated bloc. It seemed, therefore, Sir Tej Bahadur added, that to allow the Upper Chamber the right of voting supply would amount to overloading

* *Records*, Vol. III, p. 373.

the constitution with conservative influences, and might conceivably have the effect of making the Executive irremovable."*

Authentication by Governor-General

After demands have been assented to by the Chambers, the Governor-General is to authenticate by his signature a schedule specifying—

(a) the grants made by the Chambers ;

(b) the several sums required to meet the expenditure charged on the revenues of the Federation but not exceeding in the case of any sum, the amount shown in the statement previously laid before the Legislature. **Sec. 35**

His power to restore rejected demands

If the Chambers have not assented to any demand for grant or have assented subject to a reduction of the amount specified in it, the Governor-General may, if in his opinion the refusal or reduction would affect the due discharge of any of his special responsibilities, include in the schedule such additional amount, if any, not exceeding the amount of the rejected demand or the reduction, as the case may be, as appears to him necessary in order to enable him to discharge those responsibilities.

When the schedule has been authenticated by the Governor-General it is to be laid before both Chambers but is not to be open to discussion or vote.

Supplementary expenditure

If in the course of a year further expenditure from the revenues of the Federation becomes necessary over and above the expenditure already authorised a supplementary financial statement is to be laid before both Chambers. Procedure in respect of such supplementary financial statements is to be the same as for the annual financial statement. **Sec. 36**

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* *Records*, Vol. III, p. 251.

IV

Participation of States' nominees in British Indian legislation

The participation of the States, in legislation or other proceedings in the Federal Legislature, which affect purely British Indian matters is a subject which has been raised on several occasions by British Indian politicians. So far as the attitude of the Princes themselves was concerned, it was very expressly defined by the Nawab of Bhopal at the second Round Table Conference. During the course of the discussion on the 28th October, 1931, at a meeting of the Federal Structure Committee, the Nawab said: "May I make the position of the Indian States quite clear? They are not at all keen or anxious to vote on any matters which are the concern of British India". A similar statement was made by His Highness the Maharaja of Bikaner at the Committee.

Attitude of States

Before the Joint Committee, Sir Akbar Hydari made an important statement on the 30th May, 1933. He said: "We want to declare that the policy of the States is, as it has always been from the beginning, not to desire intervention in any matter affecting British India alone. At the same time we have also declared that the Indian States have an equal interest, as members of the Federation, in the existence of a strong and stable executive, and therefore, they may have the right to speak and vote, whenever such question arises. If the scheme of the White Paper is carefully studied, then, provided the matter is left to the good sense of the parties, starting with a gentleman's understanding, and developed in practice into a well-understood convention, this twofold object will be attained without endangering either of the principles which we have laid down at the outset."

The British Indian Delegation suggested the following 'formula':

(1) In a division on a matter concerning solely a British Indian subject, the representatives of the Indian States will not be entitled to vote.

British Indian Delegation's Formula

(2) Whether a matter relates solely to a British Indian subject or not will be left to the decision of the Speaker of the House, which will be final.

(3) If a substantive vote of "No Confidence" is proposed in the House on a matter relating solely to a British Indian subject, the representatives of the Indian States will be entitled to vote since the decision on such a question will vitally affect the position of a Ministry formed on the basis of collective responsibility.

(4) There should be a definite provision in the Constitution regarding the procedure on this important point, since the issues raised affect the status and rights of the representatives of the Indian States on a question of voting in the Legislature.

(5) If the Ministry is defeated on a vote of the Legislature on a subject of exclusively British Indian interest, it will be for the Ministry to decide whether it should continue in office. It will not necessarily resign as a result of the vote.

As a matter of fact, there has already been a considerable amount of misapprehension regarding the composition and the nature of the responsibility of the Federal Ministry due to the fact that the States would be represented by persons nominated by the Rulers, whose programme and attitude are likely to be difficult to ascertain.

V

Ordinances during recess of Legislature

The Governor-General is also invested with legislative powers, exercisable with the consent of the Ministers during the recess of the Legislature, on occasions of emergency. Such an ordinance shall not operate at the expiration of six weeks from the re-assembly of the Legislature, or, if before the expiration

Sec. 42.

of that period resolutions disapproving it are passed by both Chambers.

The Governor-General shall (*a*) exercise his individual judgment as respects the promulgation of any ordinance if a Bill containing the same provisions would under the Act have required his previous sanction to the introduction thereof into the Legislature; and

(*b*) shall not, without instructions from His Majesty, promulgate any such ordinance if he would have deemed it necessary to reserve a Bill containing the same provisions for the signification of His Majesty's pleasure thereon.

Governor-General's Ordinances and Acts

The Governor-General also shall have the power to promulgate ordinances at any time and to enact a "Governor-General's Act," in his discretion, with respect to certain subjects. The conditions laid down are similar to those for the Governor in the exercise of such powers, except that the words relating to the communication of
Secs. 43 & 44 such matters to the Governor-General does not, of course, appear.

Provisions in case of failure of constitutional machinery

Lastly, in the case of failure of constitutional machinery, the Governor-General has the power to carry on the administration in pursuance of a Proclamation promulgated by him in his discretion, without of course affecting the provisions of the Act relating to the Federal Court. Regarding the continuance of this con-
Sec. 45 dition of things, as against the definite three year limit provision in the case of the Provinces, it is laid down that if at any time the Federal Government has for a continuous period of three years been carried on under and by virtue of a Proclamation, then, at the expiration of that period, the Proclamation shall cease to have effect and the government of the

Federation shall be carried on in accordance with the other provisions of this Act, subject to any amendment thereof which Parliament may deem it necessary to make; but nothing in this provision shall be construed as extending the power of Parliament to make amendments in the Act without affecting the accession of a State.*

* The object of this provision, Lord Zetland explained, "is to prevent the form of government which is in operation under the provisions of this clause being brought to an end, say, after a period of eighteen months and then, after a lapse of a certain number of years, a further period of eighteen months. I think it should only be brought to an end after a continuous period." (*Debates*, House of Lords, July 3, 1935.)

APPENDIX

TABLE OF SEATS

The Council of State

Representatives of British India

(i) *Allocation of seats*

1 Province or Community	2 Total Seats	3 General Seats	4 Seats for Scheduled Castes	5 Sikh Seats	6 Mahomedan Seats	7 Women's Seats
Madras	20	14	1	—	4	1
Bombay	16	10	1	—	4	1
Bengal	20	8	1	—	10	1
United Provinces	20	11	1	—	7	1
Punjab	16	3	—	4	8	1
Bihar	16	10	1	—	4	1
Central Provinces and Berar	8	6	1	—	1	—
Assam	5	3	—	—	2	—
North-West Frontier Province	5	1	—	—	4	—
Orissa	5	4	—	—	1	—
Sind	5	2	—	—	3	—
British Baluchistan	1	—	—	—	1	—
Delhi	1	1	—	—	—	—
Ajmer-Merwara	1	1	—	—	—	—
Coorg	1	1	—	—	—	—
Anglo-Indians	1	—	—	—	—	—
Europeans	7	—	—	—	—	—
Indian Christians	2	—	—	—	—	—
Totals	150	75	6	4	49	6

(ii) *Distribution of seats for purposes of triennial elections*

Province	Number of seats to be filled originally for three years only					Number of seats to be filled originally for six years only					Number of seats to be filled originally for nine years				
	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
	General Seats	Seats for Scheduled Castes	Sikh Seats	Mahomedan Seats	Women's Seats	General Seats	Seats for Scheduled castes	Sikh Seats	Mahomedan Seats	Women's Seats	General Seats	Seats for Scheduled Castes	Sikh Seats	Mahomedan Seats	Women's Seats
Madras	—	—	—	—	—	7	—	—	2	1	7	1	—	2	—
Bombay	5	—	—	2	1	—	—	—	—	—	5	1	—	2	—
Bengal	4	1	—	5	—	—	—	—	—	—	4	—	—	5	1
United Provinces	5	1	—	3	1	6	—	—	4	—	—	—	—	—	—
Punjab	2	—	2	4	—	1	—	2	4	1	—	—	—	—	—
Bihar	—	—	—	—	—	5	1	—	2	—	5	—	—	2	1
Central Provinces and Berar .	—	—	—	—	—	6	1	—	1	—	—	—	—	—	—
Assam	—	—	—	—	—	3	—	—	2	—	—	—	—	—	—
North-West Frontier Province .	—	—	—	—	—	—	—	—	—	—	1	—	—	4	—
Orissa	4	—	—	1	—	—	—	—	—	—	—	—	—	—	—
Sind	2	—	—	3	—	—	—	—	—	—	—	—	—	—	—
British Baluchistan . . .	—	—	—	—	—	—	—	—	—	—	—	—	—	1	—
Delhi	—	—	—	—	—	—	—	—	—	—	1	—	—	—	—
Ajmer-Merwara	—	—	—	—	—	—	—	—	—	—	1	—	—	—	—
Coorg	—	—	—	—	—	—	—	—	—	—	1	—	—	—	—
Totals . . .	22	2	2	18	2	28	2	2	15	2	25	2	—	16	2

The Federal Assembly

Representatives of British India

1	2	3	4	5	6	7	8	9	10	11	12	13
		General Seats										
Province	Total Seats	Total of general Seats	General seats reserved for Scheduled Castes	Sikh Seats	Mahomedan Seats	Anglo-Indian Seats	European Seats	Indian Christian Seats	Seats for representatives of commerce and industry	Landholders' Seats	Seats for representatives of labour	Women's Seats
Madras	37	19	4	—	8	1	1	2	2	1	1	2
Bombay	30	13	2	—	6	1	1	1	3	1	2	2
Bengal	37	10	3	—	17	1	1	1	3	1	2	1
United Provinces	37	19	3	—	12	1	1	1	—	1	1	1
Punjab	30	6	1	6	14	—	1	1	—	1	—	1
Bihar	30	16	2	—	9	—	1	1	—	1	1	1
Central Provinces and Berar	15	9	2	—	3	—	—	—	—	1	1	1
Assam	10	4	1	—	3	—	1	1	—	—	1	—
North-West Frontier Province	5	1	—	—	4	—	—	—	—	—	—	—
Orissa	5	4	1	—	1	—	—	—	—	—	—	—
Sind	5	1	—	—	3	—	1	—	—	—	—	—
British Baluchistan	1	—	—	—	1	—	—	—	—	—	—	—
Delhi	2	1	—	—	1	—	—	—	—	—	—	—
Ajmer-Merwara	1	1	—	—	—	—	—	—	—	—	—	—
Coorg	1	1	—	—	—	—	—	—	—	—	—	—
Non-Provincial Seats	4	—	—	—	—	—	—	—	3	—	1	—
Total	250	105	19	6	82	4	8	8	11	7	10	9

CHAPTER SIX

DISTRIBUTION OF LEGISLATIVE POWERS

I

The conception of Federation and the change in provincial status commonly denoted by the expression Provincial Autonomy necessitate a complete departure from the existing system of concurrent jurisdictions.* There will be a statutory demarcation between the legislative competence of the Federal and Provincial Legislatures respectively, and the assignment to each of an exclusive field of competence. Following the practice of other Federal Constitutions, the respective legislative fields of the Federation and of the Provinces have been defined in terms of subjects in a Schedule to the Act. There is, however, a third List in which are set out a number of subjects with respect to which it is proposed that the Federal Legislature shall have the power of legislating concurrently with the Provincial Legislatures, with appropriate provision for resolving a possible conflict of laws.†

Statutory demarcation

Three lists of subjects

Though the Federal Court will finally decide whether or not, in a given case, the

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* Under the Act of 1919, it is provided that "the validity of any Act of the Indian Legislature or any local Legislature shall not be open to question in any legal proceedings on the ground that the Act affects a Provincial subject or a Central subject as the case may be." (Sec. 16).

† The lists are set out in Appendix A to this Chapter.

enactment has been within the competence of the Federal or Provincial Legislature respectively, the concurrent list is likely to present many complications.*

Joint Committee on Concurrent list

With regard to the concurrent list, the Joint Committee state: "Experience has shown, both in India and elsewhere, that there are certain matters which cannot be allocated exclusively either to a Central or to a Provincial Legislature, and for which, though it is often desirable that provincial legislation should make provision, it is equally necessary that the Central Legislature should also have a legislative jurisdiction, to enable it in some cases to secure uniformity in the main principles of law throughout the country, in others to guide and encourage provincial effort, and in others again to provide remedies for mischiefs arising in the provincial sphere but extending or liable to extend beyond the boundaries of a single Province. Instances of the first are provided by the subject matter of the great Indian Codes, of the second by such matters as labour legislation, and of the third by legislation for the prevention and control of epidemic disease. It would in our view be disastrous if the uniformity of law which the Indian Codes provide were destroyed or whittled away by the un-co-ordinated action of Provincial Legislatures. On the other hand, local conditions necessarily vary from Province to Province, and Provincial Legislatures ought to have the power of adapting general legislation of this kind to meet the particular circumstances of a Province." The Joint Committee recognise that the White Paper Scheme of three lists is not logically perfect and they

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* The Concurrent Legislative List is divided into 2 parts. Regarding matters mentioned in Part II of List III (concurrent), it is laid down in Sec. 126 (2), that the executive authority of the Federation shall extend to the giving of directions to a Province as to carrying into execution of any Federal legislation relating to such matters. The introduction of such legislation shall, however, require the previous sanction of the Governor-General in his discretion.

conclude that the facts of the situation are such that 'no wholly satisfactory solution is possible'.*

Allocation of residual subjects

The Committee recognise that it would, however, be beyond the skill of any draftsman to guarantee that no potential subject of legislation has been overlooked, nor can it be assumed that new subjects of legislation, unknown and unsuspected at the present time, may not hereafter arise ; and therefore, however, carefully the Lists are drawn, a residue of subjects must remain, however small it may be, which it is necessary to allocate either to the Central Legislature or to the Provincial Legislatures. The plan proposed in the White Paper was that the allocation of this residue

* Sir Samuel Hoare explained to the House of Commons the situation in the following words :—

"If it had been possible to have one list we should have been glad, but, unfortunately, as in many of these Indian problems, when we came to apply to the actual facts what we desired, we found it to be impossible. We found that Indian opinion was very definitely divided between, speaking generally, the Hindus who wish to keep the predominant power in the Centre, and the Moslems who wish to keep the predominant power in the Provinces. The extent of that feeling made each of these communities look with the greatest suspicion at the residuary field, the Hindus demanding that the residuary field should remain with the Centre and the Moslems equally strongly demanding that the residuary field should remain with the Provinces.

"The only bridge that we could find between these two diametrically opposite points of view was to have three lists, namely, the Federal List, the Provincial List and the Concurrent List, each as exhaustive as we could make it, so exhaustive as to leave little or nothing for the residuary field. I believe that we have succeeded in that attempt and that all that is likely to go into the residuary field are perhaps some quite unknown spheres of activity that neither my Hon. Friend nor I can contemplate at this moment. We find that we have really exhausted the ordinary activities of Government in the three other fields. I agree with my Hon. Friend that it means complications. I believe that it also means the possibility of increased litigation. I very much regret that that is so." (*Debates*, House of Commons, March 27, 1935).

should be left to the discretion of the Governor-General, and settled by him *ad hoc* on each occasion when the need for legislation arises. Under this plan, the formal record of the Governor-General's decisions was to have statutory force. The Act vests the Governor-General with the power of not merely allocating an unenumerated subject, but also, in so doing, to determine conclusively that a given legislative project is not, in fact, covered by the enumeration as it stands.* This was a question, which in the opinion of the Joint Committee, 'might well be open to argument'. They assume, however, that in practice the Governor-General would seek an advisory opinion from the Federal Court on the matter.

Relation between Federation and Provinces in cocurrent sphere

Regarding the relations between the Centre and the Provinces in the concurrent field the Joint Committee observe: "There are obvious attractions to those who wish to see the freedom and initiative of the Provinces as unfettered as possible in an attempt to ensure by provisions in the Constitution Act that the powers of the Centre in the concurrent field are to be capable of use only where an All-India necessity is established, and where the enactment in question can appropriately be, and in fact is, applied to every Province. We are clearly of opinion that such a restriction, apart from the prospect of litigation which it opens up, would tend to defeat the objects we have had in view in revising the List of concurrent subjects. For similar reasons we should strongly deprecate any provision requiring the prior assent of the Provinces, or of a majority of them, as a condition precedent to the exercise by the Centre of its powers in this field, or the condition suggested in the White Paper that the

Governor-General to decide

Sec. 104

* It is provided that the Governor-General, acting in his discretion, may by public notification empower either the Federal Legislature or a Provincial Legislature to enact a law with respect to any matter not enumerated in any of the lists in the Seventh Schedule to this Act, including a law imposing a tax not mentioned in any such list, and the executive authority of the Federation or of the Province, as the case may be, shall extend to the administration of any law so made, unless the Governor-General otherwise directs.

Centre is to be debarred from so using its powers in respect of a concurrent subject as to impose financial obligation on the Provinces. We recognise that, in practice, it will be impossible for the Centre to utilise its powers in the concurrent field without satisfying itself in advance that the Governments to whose territories a projected measure will apply are, in fact, satisfied with its provisions and are prepared, in cases where it will throw extra burdens upon provincial resources, to recommend to their own Legislatures the provision of the necessary supply ; but we consider that the practical relationship which are to develop between Centre and Provinces in this limited field must be left to work themselves out by constitutional usage and the influence of public opinion, and that no useful purpose would be served by attempting to prescribe them by means of rigid legal sanctions and prohibitions. Nevertheless, we regard it as essential to satisfactory relations between Centre and Provinces in this field that the Federal Government, before initiating legislation of the kind which we are discussing, should ascertain provincial opinion by calling into conference with themselves representatives of the Governments concerned. At the same time we recommend that, although no statutory limitation should be imposed upon the exercise by the Centre of its legislative powers in the concurrent field, the Governor-General should be given guidance in his Instrument of Instruction as to the manner in which he is to exercise the discretion which the White Paper proposes to vest in him in relation to matters arising in the concurrent field."*

Need of ascertaining Provincial opinion

Inconsistency between Federal, Provincial or State laws

* The Act provides that if any provision of a Provincial law is repugnant to any provision of a Federal law which the Federal Legislature is competent to enact or to any provision of an existing Indian law with respect to one of the matters enumerated in the Concurrent Legislative List then, subject to the provisions of the Act, the Federal law, whether passed before or after the Provincial law, or, as the case may be, the existing Indian law, shall prevail and the Provincial law shall, to the extent of the repugnancy, be void.

Sec. 107

Where a Provincial law with respect to one of the matters enumerated in the concurrent legislative list contains any

Power of Federal Legislature to legislate for two or more Provinces

Sec. 103

It is also provided that if it appears to the Legislatures of two or more Provinces to be desirable that any of the matters enumerated in the Provincial Legislative List should be regulated in those Provinces by an Act of the Federal Legislature, and if resolutions to that effect are passed by all the Chambers of those Provincial Legislatures, it shall be lawful for the Federal Legislature to pass an Act for regulating that matter accordingly, but any Act so passed may, as respects any Provinces to which it applies, be amended or repealed by an Act of the Legislature of that Province.

II

Special provisions have been made conferring a reserve of legislative power to the Federal Legislature. It is enacted that if the Governor-General has, in his discretion, declared by Pro-

provision repugnant to the provisions of an earlier Federal law or an existing Indian law, having been reserved for the consideration of the Governor-General or for the signification of His Majesty's pleasure, has received the assent of the Governor-General or of His Majesty, the Provincial law shall in that Province prevail, but nevertheless the Federal Legislature may at any time enact further legislation with respect to the same matter. This is subject to the qualification that no Bill or amendment for making any provision repugnant to any Provincial law, which, having been so reserved, has received the assent of the Governor-General or of His Majesty, shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.

If any provision of a law of a Federated State is repugnant to a Federal law which extends to that State, the Federal law, whether passed before or after the law of the State, shall prevail, and the law of the State shall, to the extent of the repugnancy, be void.

clamation that a grave emergency exists whereby the security of India is threatened, whether by war or internal disturbance, the Federal Legislature shall have power to make laws for a Province or any part thereof with respect to any of the matters enumerated in the Provincial Legislative List. No Bill or amendment for such purposes, however, shall be introduced or moved without the previous sanction of the Governor-General in his discretion, and the Governor-General shall not give his sanction unless it appears to him that the provision proposed to be made is a proper provision in view of the nature of the emergency.

Wide power of Federal Legislature to legislate during emergency

Sec. 102

The provisions noted above shall not, however, restrict the power of a Provincial Legislature to make any law which it has power to make, but if any provision of a Provincial law is repugnant to any provision of a Federal law which the Federal Legislature has under this section power to make, the Federal law, whether passed before or after the Provincial law, shall prevail, and the Provincial law shall to the extent of the repugnancy, but so long only as the Federal law continues to have effect, be void.

A Proclamation of Emergency, it is laid down (*a*) may be revoked by a subsequent proclamation; (*b*) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament; and (*c*) shall cease to operate at the expiration of six months, unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament.

All special laws made by the Federal Legislature by virtue of a Proclamation of Emergency, shall cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of that period.

III

The White Paper proposed that certain matters, should be placed outside the competence altogether of both Federal and Provincial Legislatures, namely, legislation affecting the Sovereign or the Royal Family, the sovereignty or dominion of the Crown over any part of British India, the law of British nationality, the Army Act, the Air Force Act, the Naval Discipline Act and the Constitution Act itself.*

Repugnancy to an Act of Parliament

* Regarding legislation that might come into conflict with an Act of Parliament, the Attorney-General said :—"The Government might take one of three courses. The first course possible is that they should maintain the existing position. That is to say, that the position as it is under Sections 65 and 84 of the Government of India Act, would remain and any Act which was repugnant to an Imperial Act of Parliament would be impossible or, if passed, would be void. The second course would be to give the Federal Legislature full and unrestricted powers to do what they like with an Imperial Act of Parliament; in other words, to give them the full freedom of legislation which is now conferred upon a Dominion like Canada to take advantage of the full use of the Statute of Westminster. The Government do not propose either of those courses. They neither propose to restrict the Indian Legislatures in the way in which they are at present restricted, nor do they propose to give them the full freedom to legislate irrespective of anything that the Imperial Parliament may have done or may do in the future. The Government propose, as the Bill shows, to take the middle course. The proposal is to select certain subjects and rule them out of the competence of the Indian Legislature."

Attorney-General's explanation of provisions

Accordingly, it has been provided that nothing in the Act shall be taken—

(*a*) to affect the power of Parliament to legislate for British India, or any part thereof; or

Sec. 110

(*b*) to empower the Federal Legislature, or any Provincial Legislature to make any law affecting the Sovereign or the Royal Family, or the sovereignty, dominion or suzerainty of

As regards the Army, Air Force and Naval Discipline Acts, the Indian Legislature is debarred from legislating in such a way as to interfere with the operation of these Acts in so far as they operate in India, while at the same time it is intendd to preserve the existing powers of the Central Legislature in India to extend the provisions of these Acts with or without modification to members of Forces raised in India.

Prior consent of Governor-General and Governor to legislation

Apart from a complete exclusion of jurisdiction in regard to these matters it is proposed to place upon the competence of the new Legislatures a limitation, taking the form familiarised by the provisions of the existing Act, whereby the Governor-General's—in some cases the Governor's—previous sanction to the introduction of certain specified classes of measures would be required. It is, however, made clear that the grant by the Governor-General or by a Governor of his prior consent to the introduction of a measure, is

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the Crown in any part of India, or the law of British nationality, or the Army Act, the Air Force Act, or the Naval Discipline Act, or the law of Prize or Prize Courts; or to make any law affecting any provisions of the Act, Order in Council or Rules made thereunder, except as expressly permitted; or to make any law, except as expressly permitted by any subsequent section, derogating from the prerogative right of His Majesty to grant special leave to appeal from any court.

In no circumstances can a Bill touching these matters come within the competence of the Indian Legislature. The proposal, explained the Attorney-General, was that, subject to the ruling out of these matters, the Indian Legislature shall be competent to legislate, with the previous sanction of the Governor-General, in his discretion. But there is another safeguard in the Instrument of Instructions. The Governor-General is there directed, by paragraph XXVII, not to assent to "any Bill the provisions of which would repeal or be repugnant to the provisions of any Act of Parliament extending to British India." Such a Bill shall be reserved for the signification of His Majesty's pleasure. (*Debates*, House of Commons, 27 March, 1935).

not to be taken as fettering his judgment, when the time comes, if the measure is passed, for his decision as to the grant or withholding of his assent or the reservation of the measure for the signification of His Majesty's pleasure.

Federal legislation requiring sanction of Governor-General

Sec. 108

It is provided that unless the Governor-General in his discretion thinks fit to give his previous sanction there shall not be introduced into, or moved in, either Chamber of the Federal Legislature, any Bill or amendment which—

(*a*) repeals, amends or is repugnant to any provisions of any Act of Parliament extending to British India ; or

(*b*) repeals, amends or is repugnant to any Governor-General's or Governor's Act, or any ordinance promulgated in his discretion by the Governor-General or a Governor ; or

(*c*) affects matters as respects which the Governor-General is, by or under the Act, required to act in his discretion ; or

(*d*) repeals, amends or affects any Act relating to any police force ;* or

(*e*) affects the procedure for criminal proceedings in which European British subjects are concerned ; or

(*f*) subjects persons not residing in British India to greater taxation than persons resident in British

* It was explained in the House of Commons that the Joint Select Committee regarded it as essential, as one of the safeguards for the police, that legislation dealing with the internal organisation and discipline of the police should only be introduced with the Governor-General's previous assent. With regard to a resolution dealing with the conduct of the police in any particular case, there is nothing under this section to prevent that discussion taking place. Therefore, it would be perfectly possible for the Legislature to raise the question of the conduct of the police. The reason why it is undesirable to give power to the Legislature to introduce legislation affecting the police, was explained to be that some person or persons, desiring to destroy the whole morale of the police, may introduce a Bill for that purpose.

India or subjects companies not wholly controlled and managed in British India to greater taxation than companies wholly controlled and managed therein ; or

(*g*) affects the grant of relief from any Federal tax on income in respect of income taxed or taxable in the United Kingdom.

Provincial legislative proposals requiring sanction of Governor-General

Unless the Governor-General in his discretion thinks fit to give his previous sanction there shall not be introduced into, or moved in, a Chamber of a Provincial Legislature any Bill or amendment which—

(*a*) repeals, amends, or is repugnant to any provisions of any Act of Parliament extending to British India ; or

(*b*) repeals, amends or is repugnant to any Governor-General's Act, or any ordinance promulgated in his discretion by the Governor-General ; or

(*c*) affects matters as respects which the Governor-General is by or under this Act, required to act in his discretion ; or

(*d*) affects the procedure for criminal proceedings in which European British subjects are concerned.

Proposals requiring Governor's sanction

Further, unless the Governor of the Province in his discretion thinks fit to give his previous sanction, there shall not be introduced or moved any Bill or amendment which—

(*i*) repeals, amends or is repugnant to any Governor's Act, or any ordinance promulgated in his discretion by the Governor ; or

(*ii*) repeals, amends or affects any Act relating to any police force.

It is added that nothing in this section affects the operation of any other section in the Act which requires the previous sanction of the Governor-General or of a Governor to the introduction of any Bill or the moving of any amendment.

Power to legislate for States

It is also provided that nothing in the Act shall be construed as empowering the Federal Legislature to make laws for a Federated State

Sec. 101 otherwise than in accordance with the Instrument of Accession of that State and any limitations contained therein.*

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* The Joint Committee explain this rather peculiar and, in constitutional theory, inconsistent proviso in the following words: "While every Act of the Federal Legislature regulating any subject which has been accepted by a State as a federal subject will apply *proprio vigore* in that State as they will apply in a Province, a duty identical with that imposed upon Provincial Governments being imposed upon the Ruler to secure that due effect is given in his territories to its provisions, yet this jurisdiction of the Federal Legislature in the States will not be exclusive. It will be competent for the State to exercise their existing powers of legislation in relation to such a subject, with the proviso that, in case of conflict between a State law and a Federal law on a subject accepted by the State as federal, the latter will prevail. We understand that the States, who are free agents in this respect, are likely in the first instance to take their stand upon the Federal List proper and to accept the jurisdiction of the Federal Legislature in nothing which is outside the boundaries of that List; but we hope that in course of time they may be willing to extend their accessions at least to certain of the items, such as bankruptcy and insolvency, in the Concurrent List." (Vol. I, Part I, para. 236).

APPENDIX A

Seventh Schedule

LEGISLATIVE LISTS

LIST I

Federal Legislative List

1. His Majesty's naval, military and air forces borne on the Indian establishment and any other armed force raised in India by the Crown, not being forces raised for employment in Indian States or military or armed police maintained by Provincial Governments; any armed forces which are not forces of His Majesty, but are attached to or operating with any of His Majesty's naval, military or air forces borne on the Indian establishment; central intelligence bureau; preventive detention in British India for reasons of State connected with defence, external affairs, or the discharge of the functions of the Crown in its relations with Indian States.

2. Naval, military and air force works; local self-government in cantonment areas (not being cantonment areas of Indian State troops), the regulation of house accommodation in such areas, and, within British India, the delimitation of such areas.

3. External affairs; the implementing of treaties and agreements with other countries; extradition, including the surrender of criminals and accused persons to parts of His Majesty's dominions outside India.

4. Ecclesiastical affairs, including European cemeteries.

5. Currency, coinage and legal tender.

6. Public debt of the Federation.

7. Posts and telegraphs, including telephones, wireless, broadcasting, and other like forms of communication; Post Office Savings Bank.

8. Federal Public Services and Federal Public Service Commission.

9. Federal pensions, that is to say, pensions, payable by the Federation or out of Federal revenues.

10. Works, lands and buildings vested in, or in the possession of, His Majesty for the purposes of the Federation (not being naval, military or air force works), but, as regards property situate in a Province, subject always to Provincial legislation, save in so far as Federal law otherwise provides, and, as regards property in a federated State held by virtue of any lease or agreement with that State, subject to the terms of that lease or agreement.

11. The Imperial Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial, and any similar institution controlled or financed by the Federation.

12. Federal agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.

13. The Benares Hindu University and the Aligarh Muslim University.

14. The Survey of India, the Geological, Botanical and Zoological Surveys of India; Federal meteorological organisations.

15. Ancient and historical monuments; archæological sites and remains.

16. Census.

17. Admission into, and emigration and expulsion from, India, including in relation thereto the regulation of the movements in India of persons who are not British subjects domiciled in India, subjects of any Federated State, or British subjects domiciled in the United Kingdom; pilgrimages to places beyond India.

18. Port quarantine; seamen's and marine hospitals, and hospitals connected with port quarantine.

19. Import and export across customs frontiers as defined by the Federal Government.

20. Federal railways; the regulation of all railways other than minor railways in respect of safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers; the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers.

21. Maritime shipping and navigation, including shipping and navigation on tidal waters; Admiralty jurisdiction.

22. Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of Port Authorities therein.

23. Fishing and fisheries beyond territorial waters.

24. Aircraft and air navigation; the provision of aerodromes, regulation and organisation of air traffic and of aerodromes.

25. Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft.

26. Carriage of passengers and goods by sea or by air.

27. Copyright, inventions, designs, trademarks and merchandise marks.

28. Cheques, bills of exchange, promissory notes and other like instruments.

29. Arms; firearms; ammunition.

30. Explosives.

31. Opium, so far as regards cultivation and manufacture, or sale for export.

32. Petroleum and other liquids and substances declared by Federal law to be dangerously inflammable, so far as regards possession, storage and transport.

33. Corporations, that is to say, the incorporation, regulation and winding-up of trading corporations, including banking, insurance and financial corporations, but not including corporations owned or controlled by a Federated State and carrying on business only within that State or co-operative societies, and of corporations, whether trading or not, with objects not confined to one unit.

34. Development of industries, where development under Federal control is declared by Federal law to be expedient in the public interest.

35. Regulation of labour and safety in mines and oilfields.

36. Regulation of mines and oilfields and mineral development to the extent to which such regulation and development under Federal control is declared by Federal law to be expedient in the public interest.

37. The law of insurance, except as respects insurance undertaken by a Federated State, and the regulation of the conduct of insurance business, except as respects business undertaken by a Federated State; Government insurance,

except so far as undertaken by a Federated State, or, by virtue of any entry in the Provincial Legislative List or the Concurrent Legislative List, by a Province.

38. Banking, that is to say, the conduct of banking business by corporations other than corporations owned or controlled by a Federated State and carrying on business only within that State.

39. Extension of the powers and jurisdiction of members of a police force belonging to any part of British India to any area in another Governor's Province or Chief Commissioner's Province, but not so as to enable the police of one part to exercise powers and jurisdiction elsewhere without the consent of the Government of the Province or the Chief Commissioner, as the case may be; extension of the powers and jurisdiction of members of a police force belonging to any unit to railway areas outside that unit.

40. Elections to the Federal Legislature, subject to the provisions of this Act and of any Order in Council made thereunder.

41. The salaries of the Federal Ministers, of the President and Vice-President of the Council of State and of the Speaker and Deputy Speaker of the Federal Assembly; the salaries, allowances and privileges of the members of the Federal Legislature; and, to such extent as is expressly authorised by Part II of this Act (relating to the Federation of India), the punishment of persons who refuse to give evidence or produce documents before Committees of the Legislature.

42. Offences against laws with respect to any of the matters in this list.

43. Inquiries and statistics for the purposes of any of the matters in this list.

44. Duties of customs, including export duties.

45. Duties of excise on tobacco and other goods manufactured or produced in India except—

(*a*) alcoholic liquors for human consumption;
(*b*) opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs;
(*c*) medicinal and toilet preparations containing alcohol, or any substance included in sub-paragraph (*b*) of this entry.

46. Corporation tax.

47. Salt.
48. State lotteries.
49. Naturalisation.

50. Migration within India from or into a Governor's Province or a Chief Commissioner's Province.

51. Establishment of standards of weight.
52. Ranchi European Mental Hospital.

53. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list and, to such extent as is expressly authorised by Part IX of this Act (relating to the Judicary), the enlargement of the appellate jurisdiction of the Federal Court, and the conferring thereon of supplemental powers.

54. Taxes on income other than agricultural income.

55. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies.

56. Duties in respect of succession to property other than agricultural land.

57. The rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, proxies and receipts.

58. Terminal taxes on goods or passengers carried by railway or air; taxes on railway fares and freights.

59. Fees in respect of any of the matters in this list, but not including fees taken in any Court.

LIST II

Provincial Legislative List

1. Public order (but not including the use of His Majesty's naval, military or air forces in aid of the civil power); the administration of justice; constitution and organisation of all courts, except the Federal Court, and fees taken therein; preventive detention for reasons connected with the maintenance of public order; persons subjected to such detention.

2. Jurisdiction and powers of all courts except the Federal Court, with respect to any of the matters in this list; procedure in Rent and Revenue Courts.

3. Police, including railway and village police.

4. Prisons, reformatories, Borsal institutions and other institutions of a like nature, and persons detained therein; arrangements with other units for the use of prisons and other institutions.

5. Public debt of the Province.

6. Provincial Public Services and Provincial Public Service Commissions.

7. Provincial pensions, that is to say, pensions payable by the Province or out of Provincial revenues.

8. Works, lands and buildings vested in or in the possession of His Majesty for the purposes of the Province.

9. Compulsory acquisition of land.

10. Libraries, museums and other similar institutions controlled or financed by the Province.

11. Elections to the Provincial Legislature, subject to the provisions of this Act and of any Order in Council made thereunder.

12. The salaries of the Provincial Ministers, of the Speaker and Deputy Speaker of the Legislative Assembly, and, if there is a Legislative Council, of the President and Deputy President thereof; the salaries, allowances and privileges of the members of the Provincial Legislature; and, to such extent as is expressly authorised by Part III of this Act (relating to the Governors' Provinces), the punishment of persons who refuse to give evidence or produce documents before Committees of the Provincial Legislature.

13. Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

14. Public health and sanitation; hospitals and dispensaries; registration of births and deaths.

15. Pilgrimages, other than pilgrimages to places beyond India.

16. Burials and burial grounds.

17. Education.

18. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; minor railways subject to the provisions of List I with respect

to such railways; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List III with regard to such waterways; ports, subject to the provisions in List I with regard to major ports; vehicles other than mechanically propelled vehicles.

19. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power.

20. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases; improvement of stock and prevention of animal diseases; veterinary training and practice; pounds and the prevention of cattle trespass.

21. Land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant, and the collection of rents; transfer, alienation and devolution of agricultural land; land improvement and agricultural loans; colonization; Courts of Wards; encumbered and attached estates; treasure trove.

22. Forests.

23. Regulation of mines and oilfields and mineral development subject to the provisions of List I with respect to regulation and development under Federal control.

24 Fisheries.

25. Protection of wild birds and wild animals.

26. Gas and gasworks.

27. Trade and commerce within the Province; markets and fairs; money lending and money lenders.

28. Inns and innkeepers.

29. Production, supply and distribution of goods; development of industries, subject to the provisions in List I with respect to the development of certain industries under Federal control.

30. Adulteration of foodstuffs and other goods; weights and measures.

31. Intoxicating liquors and narcotic drugs, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs, but subject, as respects opium, to the provisions of List I and, as respects poisons and dangerous drugs, to the provisions of List III.

32. Relief of the poor; unemployment.

33. The incorporation, regulation, and winding-up of corporations other than corporations specified in List I; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.

34. Charities and charitable institutions; charitable and religious endowments.

35. Theatres, dramatic performances and cinemas, but not including the sanction of cinematograph films for exhibition.

36. Betting and gambling.

37. Offences against laws with respect of any of the matters in this list.

38. Inquiries and statistics for the purpose of any of the matters in this list.

39. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenue.

40. Duties of excise on the following goods manufactured or produced in the Province and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India—

(*a*) alcoholic liquors for human consumption;
(*b*) opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs;
(*c*) medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (*b*) of this entry.

41. Taxes on agricultural income.

42. Taxes on lands and buildings, hearths and windows.

43. Duties in respect of succession to agricultural land.

44. Taxes on mineral rights, subject to any limitations imposed by any Act of the Federal Legislature relating to mineral development.

45. Capitation taxes.

46. Taxes on professions, trades, callings and employments.

47. Taxes on animals and boats.

48. Taxes on the sale of goods and on advertisements.

49. Cesses on the entry of goods into a local area for consumption, use or sale therein.

50. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.

51. The rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.

52. Dues on passengers and goods carried on inland water-ways.

53. Tolls.

54. Fees in respect of any of the matters in this list, but not including fees taken in any Court.

LIST III

Concurrent Legislative List

PART I

1. Criminal law, including all matters included in the Indian Penal Code at the date of the passing of this Act, but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of His Majesty's naval, military and air forces in aid of the civil power.

2. Criminal Procedure, including all matters included in the Code of Criminal Procedure at the date of the passing of this Act.

3. Removal of prisoners and accused persons from one unit to another unit.

4. Civil Procedure, including the law of Limitation and all matters included in the Code of Civil Procedure at the date of the passing of this Act; the recovery in a Governor's Province or a Chief Commissioner's Province of claims in respect of taxes and other public demands, including arrears of land revenue and sums recoverable as such, arising outside that Province.

5. Evidence and oaths ; recognition of laws, public acts and records and judicial proceedings.

6. Marriage and divorce ; infants and minors; adoption.

7. Wills, intestacy, and succession, save as regards agri-tultural land.

8. Transfer of property other than agricultural land; registration of deeds and documents.

9. Trusts and Trustees.

10. Contracts, including partnership, agency, contracts of carriage, and other special forms of contract, but not including contracts relating to agricultural land.

11. Arbitration.

12. Bankruptcy and insolvency; administrators-general and official trustees.

13. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.

14. Actionable wrongs, save in so far as included in laws with respect to any of the matters specified in List I or List II.

15. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list.

16. Legal, medical and other professions.

17. Newspapers, books and printing presses.

18. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficients.

19. Poisons and dangerous drugs.

20. Mechanically propelled vehicles.

21. Boilers.

22. Prevention of cruelty to animals.

23. European vagrancy; criminal tribes.

24. Inquiries and statistics for the purpose of any of the matters in this Part of this List.

25. Fees in respect of any of the matters in this Part of this List, but not including fees taken in any Court.

PART II

Vide Sec. 126 (2).

26. Factories.

27. Welfare of labour; conditions of labour; provident funds; employers' liability and workmen's compensation; health insurance, including invalidity pensions; old age pensions.

28. Unemployment insurance.

29. Trade unions; industrial and labour disputes.

30. The prevention of the extension from one unit to another of infectious or contagious diseases or pests affecting men, animals or plants.

31. Electricity.

32. Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways; carriage of passengers and goods on inland water-ways.

33. The sanctioning of cinematograph films for exhibition.

34. Persons subjected to preventive detention under Federal authority.

35. Inquiries and statistics for the purpose of any of the matters in this Part of this List.

36. Fees in respect of any of the matters in this Part of this List, but not including fees taken in any Court.

APPENDIX B

Administrative Relations between the Federation, Provinces and States

I

Joint Committee on administrative nexus between Federation and the units

The transformation of British India from a unitary into a Federal State necessitates a complete readjustment of the relations between the Federal and Provincial Governments. Now that the respective spheres of the Centre and of the Provinces will be strictly delimited and the jurisdiction of each (except in the concurrent field), will exclude the jurisdiction of the other, a nexus of a new kind, state the Joint Committee, must be established between the Federation and its constituent units. They are, however, impressed by the possible dangers of a too strict interpretation of the principle of Provincial Autonomy, and make certain recommendations regarding the administrative relations between the Federal Government, as such, on the one hand, and the Provincial Governments and the Rulers or Governments of the Indian States on the other.

Obligation of units and Federation

Sec. 122

Governor-General may require Governors to dicharge certain functions as his agents

Sec. 123

Besides the obligation of every Province and Federated State to so exercise their executive authority as to secure respect for the laws of the Federal Legislature, there are several other important provisions in the Act determining the administrative relations between the units and the Federation. It is laid down that the Governor-General may direct the Governor of any Province to discharge as his agent, either generally or in any particular case, such functions in and in relation to the tribal areas as may be specified in the direction and such functions in relation to defence, external affairs, or ecclesiastical affairs as may be specified in the direction. In the discharge of any such functions the Governor shall act in his discretion.

Power of Federation to confer powers &c. on Provinces and States

Notwithstanding anything in the Act, the Governor-General may, with the consent of the Government of a Province or the Ruler of a Federated State, entrust either conditionally or unconditionally to that Government or Ruler, or to their respective officers, functions in relation to any matter to which the executive authority of the Federation extends.

Sec. 124

Payment of costs

It is provided that an Act of the Federal Legislature may, notwithstanding that it relates to a matter with respect to which a Provincial Legislature has no power to make laws, confer powers and impose duties upon a Province or officers and authorities thereof. An Act of the Federal Legislature which extends to a Federated State may confer powers and impose duties upon the State or officers and authorities thereof to be designated for the purpose by the Ruler. Where by virtue of the provisions of the Act powers and duties have been conferred or imposed upon a Province or Federated State or officers or authorities thereof, it is provided that there shall be paid by the Federation to the Province or State such sum as may be agreed, or in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of any extra costs of administration incurred by the Province or State in connection with the exercise of those powers and duties.

Administration of Federal Acts in Indian States

It is also provided that agreements may, and, if provision has been made in that behalf by the Instrument of Accession of the State, shall, be made between the Governor-General and the Ruler of a Federated State for the exercise by the Ruler or his officers of functions in relation to the administration in his State of any law of the Federal Legislature which applies therein.

Sec. 125

Power of Governor-General to issue directions

An agreement made under the section shall contain provisions enabling the Governor-General in his discretion to satisfy himself, by inspection or otherwise, that the administration of the law to which the agreement relates is carried out in accordance with the policy of the Federal Government and, if he is not so satisfied, the Governor-General, acting in his discretion, may issue such directions to the Ruler as he thinks fit. It is laid down that all courts shall take judicial notice of any agreement under the section.

Duty of Ruler of a State re: Federal subjects

If it appears to the Governor-General that the Ruler of any Federated State has in any way failed to fulfil his obligations, the Governor-General, acting in his discretion, may after considering any representations made to him by the Ruler issue such directions to the Ruler as he thinks fit.

Sec. 128

References to Federal Court

But, if any question arises as to whether the executive authority of the Federation is exercisable in a State with respect to any matter or as to the extent to which it is so exercisable, the question may, at the instance either of the Federation or the Ruler, be referred to the Federal Court for determination by that Court in the exercise of its original jurisdiction under the Act.

Control of Federation over Provinces in certain cases

Sec. 126

Regarding the control of the Federation over the Provinces it is laid down that the executive authority of the Federation shall extend to the giving of such directions to a Province as may appear to be necessary for that purpose ; it shall also extend to the giving of directions to a Province as to the carrying into execution therein of any Act of the Federal Legislature which relates to a matter specified in Part II of the Concurrent Legislative List and authorises the giving of such directions. It is provided that a Bill or amendment which proposes to authorise the giving of any such directions as aforesaid shall not be introduced into or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion. If it appears to the Governor-General that in any Province effect has not been given to any directions given under the section, the Governor-General, acting in his discretion, may issue as orders to the Goveror of that Province either the directions previously given or those directions modified in such manner as the Governor-General thinks proper. Without prejudice to such powers, the Governor-General, acting in his discretion, may at any time issue orders to the Governor of a Province as to the manner in which the executive authority thereof is to be exercised for the purpose of preventing any grave menace to the peace or tranquillity of India or of any part thereof.

II

Inter-Provincial co-operation

The Joint Parliamentary Committee think that when the new Constitution comes into force there will necessarily be many subjects, on which inter-provincial consultation will be required, as, indeed, has proved to be the case even at the present time. They recommended that every effort should be made to develop a system of inter-provincial conferences, at which administrative problems common to adjacent areas as well as points of difference may be discussed and adjusted. It is obvious that if departments or institutions of co-ordination and research are to be maintained at the Centre in such matters as agriculture, forestry, irrigation, education, and public health, and if such institutions are to be able to rely on appropriations of public funds sufficient to enable them to carry on their work, the joint interest of the Provincial Governments in them must be expressed in some regular and recognised machinery of inter-governmental consultation. The Joint Committee, further, are of opinion that it will be of vital importance to establish some such machinery at the very outset of the working of the new Constitution, since it is precisely at that moment that institutions of this kind may be in most danger of falling between two stools through failing to enlist the active interest either of the Federal or the Provincial Governments, both of whom will have many other more immediate pre-occupations.

Though the Joint Select Committee did not consider it advisable that the constitution of an Inter-Provincial Council should be fixed in the Act itself, they recommended the inclusion of provisions which would enable such Council to be established in the future.* Effect is given to this recommendation by the Act, which provides as follows—

If at any time it appears to His Majesty upon consideration of representations addressed to him by the Governor-General

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* Dr. B. N. Kaul, Chairman of the Department of Economics, Muslim University, Aligarh, in the course of a paper read before the Indian Economic Conference at Dacca in January, 1936, on "Economic Welfare under the New Constitu-

Provision with respect to Inter-Provincial Council

that the public interests would be served by the establishment of an Inter-Provincial Council charged with the duty of—

(a) inquiring into and advising upon disputes which may have arisen between Provinces;

(b) investigating and discussing subjects in which some or all of the Provinces, or the Federation and one or more of the Provinces, have a common interest; or

(c) making recommendation upon any such subject and, **Sec. 135** in particular, recommendations for the better co-ordination of policy and action with respect to that subject,

it shall be lawful for His Majesty in Council to establish such a Council, and to define the nature of the duties to be performed by it and its organisation and procedure.

An Order establishing any such Council may make provision for representatives of Indian States to participate in the work of the Council.

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tion", observes: "No government, especially under present conditions, can altogether disclaim the responsibility of controlling and regulating economic life of the people. . . . . . Successful organisation of economic development of a country requires that this hapazard and chaotic method of state interference should be substituted by economic planning . . . . The general scheme of administration under the Government of India Act considerably limits the scope of planning.

"The Act creates three un-co-ordinated centres of power, the Governor-General and Governors for the purpose of their 'special responsibilities' and for subjects in respect to which they are required to act 'in their discretion,' the Federal Government and the Provincial Governments, and recognises a fourth centre of power—the Governments of the States. Important economic functions are assigned to each, but no means is provided for co-ordinating the economic activity of one centre of power with another." He adds that no provision is made for co-ordinating measures for agricultural improvement initiated by the provinces and regulation of foreign trade by the Federation, so that it is possible that improvement in the condition of agricultural classes by provincial effort may be offset by, for instance, protectionist policy followed by the Federation. Though, Section 135 of the Act provides for the establishment of Inter-Provincial Councils for investigations in connection with matters of common interests for a number of

III

Specific provisions are also made regarding Broadcasting and Interference with Water Supplies. With regard to the former, the Federal Government reserves the control of broadcasting rights in the Provinces and Federated States, but they must not refuse unreasonably to entrust the Provincial Governments and Rulers with the power to construct and use transmitters, and to regulate and impose fees in respect of them.

Broadcasting

Sec. 129

The Federal Government may not restrict the matter broadcast, except in so far as such restriction may, in the opinion of the Governor-General, be necessary for the prevention of any grave menace to the peace and tranquillity of India or for the securing of the due administration of the reserved subjects. All questions as to conditions imposed on any Provincial Government or Ruler, including matters of finance, and the refusal by the Federal Government to entrust functions, shall be determined by the Governor-General in his discretion.

Water-supplies

Regarding water supplies, under the Act of 1919, the Government of India possess what may be called a general right to use and control in the public interest, the water supplies of the country as a whole, and each Province claims a similar right over its own water supply. Water supplies is a Provincial subject for legislation and administration, but the Central Legislature also has the power to legislate upon it "with regard to matters of inter-provincial concern or affecting the relations of a Province with any other territory". The administration of water supplies in a Province was reserved by the Act of 1919, to the Governor in Council, and was, therefore, under the ultimate control of the Secretary of State, with whom the final decision rested when claims or disputes arose between one Provincial Government and another or one State and another, or between a Province and a State. But it is apparent that the control of the Secretary of State may not continue under the new Constitution.

Existing arrangements

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provinces and for making recommendations for better co-ordination of policy, in Dr. Kaul's opinion, these can be utilised only to some extent for advisory purposes and for overcoming difficulties arising out of distribution of power.

Complaints as to interference with water-supplies

Under the Act, where a dispute arises between two units of the Federation with respect to an alleged use by one unit of its executive or legislative powers in relation to water supplies in a manner detrimental to the interests of the other, the aggrieved Government or Ruler may complain to the Governor-General. On

Sec. 130

the receipt of such a complaint, the Governor-General, unless he thinks fit summarily to reject it, is to appoint a Commission consisting of persons having special knowledge and experience in irrigation, engineering, administration, finance and law, for the purpose of investigating and reporting upon the matter. After

Complaints and their Settlement

considering any report made to him by the Commission, the Governor-General is to give such decision and make such order, if any, as he may deem proper. The right is reserved to the Government of a Province or

Sec. 131

the Ruler of a State to request the Governor-General to refer the matter to His Majesty in Council. Any Act of a Provincial Legislature or of a State which is repugnant to an order of His Majesty in Council or the Governor-General in respect of water supplies is to be void to the extent of the repugnancy.

Courts excluded

Sec. 133

The jurisdiction of the Federal Court and of any other Court is excluded in the case of any dispute which can be decided by the Governor-General.

Reservation by States

Sec. 134

These provisions are not intended to extend to a case where one unit is desirous of securing the right to make use of water supplies in the territory of another unit, but only to the case of one unit using water to the detriment of another. The Ruler of a State may exclude the application of provisions as to water-supply, by making a reservation to that effect in his Instrument of Accession.

CHAPTER SEVEN

THE JUDICATURE

A. The Federal Court

The White Paper acknowledged that in a Constitution created by the federation of a number of separate political units and providing for the distribution of powers between a Central Legislature and Executive on the one hand and the Legislatures and Executive of the federal units on the other, a Federal Court has always been recognised as an essential element. Such a Court is, in particular, needed to interpret authoritatively the Federal Constitution itself. The ultimate decision on questions concerning the respective spheres of the Federal, Provincial and State authorities is also most conveniently entrusted to a Tribunal independent of Federal, Provincial and State Governments. Such a Tribunal would, in any event, be required to prevent the mischief which might otherwise arise if the various High Courts and State Courts interpreted the Constitution in different senses, and thus made the law uncertain and ambiguous. "A Federal Court is an essential element in a Federal Constitution. It is at once the interpreter and guardian of the Constitution and a tribunal for the determination of disputes between the constituent units of the Federation."*

Role of Federal Court

* *J.P.C. Report*, Vol. I, Part I.

I

Seat of Federal Court

The Federal Court will sit at Delhi and at such other place or places, if any, as the Chief Justice of India may, with the approval of the Governor-General, from time to time appoint. It will have (*a*) an original jurisdiction; (*b*) an appellate jurisdiction in appeals from High Courts in British India ; and (*c*) an appellate jurisdiction in appeals from High Courts in Federated States.

Sec. 203

Original jurisdiction

The Federal Court shall, to the exclusion of any other court, have an original jurisdiction in any dispute between any two or more of the following parties, that is to say, the Federation, any of the Provinces or any of the Federated States, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends.

Sec. 204

But the said jurisdiction shall not extend to—

(*a*) a dispute to which a State is a party, unless the dispute—

(*i*) concerns the interpretation of the Act or of an Order in Council made thereunder, or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of that State ; or

(*ii*) arises under an agreement made under the Act in relation to the administration in that State of a law of the Federal Legislature, or otherwise concerns some matter with respect to which the Federal Legislature has power to make Laws for that State ; or

(*iii*) arises under an agreement made after the establishment of the Federation, with the approval of His Majesty's Representative for the exercise of the functions of the Crown

in its relations with Indian States, between that State and the Federation or a Province being an agreement which expressly provides that the said jurisdiction shall extend to such a dispute ;

(b) a dispute arising under any agreement which expressly provides that the said jurisdiction shall not extend to such a dispute.

The Federal Court in the exercise of its original jurisdiction shall not pronounce any judgment other than a declaratory judgment.

Appellate jurisdiction of Federal Court in appeals from High Courts in British India

An appeal shall lie to the Federal Court from any judgment, decree or final order of a High Court in British India, if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Act or any Order in Council made thereunder. It shall be the duty of every High Court in British India to consider in every case whether or not any such question is involved and of its own motion to give or to withhold a certificate accordingly. **Sec. 205**

Where such a certificate is given, any party in the case may appeal to the Federal Court on the ground that any such question as aforesaid has been wrongly decided, and on any ground on which that party could have appealed without special leave to His Majesty in Council if no such certificate had been given, and, with the leave of the Federal Court, on any other ground, and no direct appeal shall lie to His Majesty in Council, either with or without special leave.*

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* The Solicitor-General explained the purport of the Section as follows :—"This Clause deals with the appellate jurisdiction of the Federal Court and provides that if in a case in the High Court it appears that a substantial question of law involving an interpretation either of this Bill or any Order-in-Council made under it arises, there shall be a right of appeal to the Federal Court if the High Court certifies that such a question

Appeals from High Courts in Federated States

From the High Court of a Federated State appeal lies if it is alleged that a question of law regarding the interpretation of the Act or an Order in Council under it has been wrongly decided; the procedure is by way of case stated either on the initiative of the High Court or of the Federal Court.

Sec. 207

Enforcement of decrees and orders of Federal Court

It is laid down that all authorities, civil and judicial, shall act in aid of the Federal Court. The Federal Court shall, as respects British India and the Federated States, have power to make any order for the purpose of securing the attendance of any person,* the discovery or production of any documents, etc. Any such orders, and any orders of the Federal Court as to the costs of and incidental to any proceedings therein,

Sec. 210

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of law arises. The second part of the Clause says that a person can appeal on that ground once he has got his certificate. There may be other grounds in the case, and, if they are proper grounds for appeal, leave may be given.

"The main purpose of the Clause is to ensure that appeals which involve questions of the interpretation of the Constitution shall go to a higher court.

"Nothing in the Clause affects the right of appeal to the Privy Council in cases outside the Clause. In cases that fall within the Clause, which involve matters of interpretation of the Constitution, parties will have to go to the Federal Court. There is a further right of appeal from the Federal Court to the Privy Council." (*Debates*, House of Commons, April 1, 1935.)

* In the course of a discussion as to whether the Section involves the attendance of Rulers of States or Governors of Provinces, for instance, the Attorney-General explained that under this Section, the Federal Court is to have power to make the orders which any High Court in British India would have power to make in regard to the territory over which it has jurisdiction. (*Debates*, House of Commons, April 1, 1935.)

shall be enforceable in every part of British India or of any Federated State.

Letters of Request to Federated States

Where in any case the Federal Court require a special case to be stated or re-stated by, or remit a case to, or order a stay of execution in a case from, a High Court in a Federated State, or require the aid of the civil or judicial authorities in a Federated State, the Federal Court shall cause letters of request in that behalf to be sent to the Ruler of the State, and the Ruler shall cause such communication to be made to the High Court or to any judicial or civil authority as the circumstances may require.* Sec. 211

II

Composition of Federal Court

The Federal Court will consist of a Chief Justice of India and such number of other judges as His Majesty may deem necessary. The puisne judges are not, however, to exceed six unless and until an address has been presented by the Federal Legislature to the Governor-General for submission to His Majesty praying for an increase in the number. Sec. 200

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* The Attorney-General stated that the Section was framed in this way in order that the appropriate phrase, "letters of request" might be used in regard to a Sovereign Ruler instead of the expression of a direct order. The expression "letters of request", is familiar to lawyers as a phrase used when one Sovereign Ruler has to make a communication to another with regard to the performance of some act necessary for the administration of justice in the first of the two countries. "It is merely an enactment to show proper respect to a Sovereign Ruler, without the necessity of an order being directed to him to state a case, that letters of request shall be addressed to him." (*Debates*, House of Commons, April 1, 1935.)

Every judge of the Federal Court is to be appointed by His Majesty and is to hold office until he attains the age of sixty-five years. But a judge may resign his office, and may be removed therefrom by His Majesty on the ground of misbehaviour or of infirmity of mind or body if the Judicial Committee of the Privy Council, on reference being made to them by His Majesty, report that the judge ought on any such ground to be removed.

A person is not qualified for appointment as a judge of the Federal Court unless he—

(*a*) has been for at least five years a judge of a High Court in British India or in a Federated State; or

(*b*) is a barrister of England or Northern Ireland of at least ten years' standing, or a member of the Faculty of Advocates in Scotland of at least ten years' standing; or

(*c*) has been for at least ten years a pleader of a High Court in British India or in a Federated State or of two or more such Courts in succession.

Qualifications of Chief Justice

A person is not, however, to be qualified for appointment as Chief Justice of the Federal Court unless he is, or when first appointed to judicial office was, a barrister, a member of the Faculty of Advocates or a pleader. Further in relation to the Chief Justice of India for the references in paragraphs (*b*) and (*c*) above to ten years, there are to be substituted references to fifteen years.*

Objections to the Constitution of the Court in Parliament

* The exceptions regarding the Chief Justice represent the result of a great deal of opposition. In the House of Commons Labour Members raised objection to the provisions regarding the constitution of the Court as contained in the Bill. Referring to the very important jurisdiction which is to be conferred on the Federal Court in regard to the making of rules

The Judges of the Federal Court shall be entitled to such salaries and allowances, including allowances for expenses in respect of equipment and travelling upon apointment, and to such rights in respect of leave and pensions as may from time to time be fixed by His Majesty in Council, provided that neither the salary of a judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

Salaries, etc., of Judges

Sec. 201

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of court and determining the procedure which shall be followed in the Federal Court, it was urged that the Chief Justice, at least, should not be recruited from the Civil Service. The Calcutta Bar, the Bar Association and the Incorporated Law Society of Calcutta in a joint representation noted that they were opposed to the proposal that "Indian Civil Service Judges should be eligible for permanent appointment as Chief Justices (1) because maintenance of the best legal traditions, in the interest of which the Joint Select Committee themselves recommend the recruitment of some judges from the Bars of the United Kingdom, is most essential on the part of the Chief Justice; (2) because it is fundamentally unsound that the head of the supreme Judiciary of a country may be not a lawyer at all and without any legal education, training or tradition; (3) because apart from his judicial work, in the matter of framing rules and circular orders for the subordinate judiciary, certain qualities are required of the Chief Justice which members of the Bar, trained in the profession, naturally possess in a large measure than any layman, however experienced; and (4) because the appointment of a civil service judge to the office of Chief Justice would impair public confidence in the High Court, both on account of his lack of legal training and his service associations with the executive."

Objections to original provisions re : Chief Justice

In this connection a speaker observed : "I do not know a single instance on this side of the Atlantic or within the Empire where the Federal Court has not had to make a stand against the executive. The possibility that the Executive in India, may be in a position in which they can appoint someone other than a lawyer to these important offices is bound to end in the protection for the subject, which the establish-

Executive impact on Judiciary

Expenses of Federal Court

The administrative expenses of the Federal Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, shall be charged upon the revenues of the Federation, and any fees or other moneys taken by the Court shall form part of those revenues.

Sec. 216

The Governor-General shall exercise his individual judgment as to the amount to be included in respect of the administrative expenses of the Federal Court in any estimates of expenditure laid by him before the Chambers of the Federal Legislature.

Sec. 212

Finally, it is laid down that the law declared by the Federal Court and Privy Council is to be binding on all Courts.

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ment of these federal courts is intended to give, becoming perfectly worthless to the subject. I submit that in the interests of the liberty of the subject it should be utterly impossible at any future time for the Executive, either in this country or in India, to be able to put the subject in that position." Mr. W. P. Spens in the House of Commons, April 1, 1935.

Solicitor-General's assurance

The Solicitor-General, in replying to the debate, said that "the judges of the Indian Civil Service start judicial work at the very outset of their careers, and that before they can be appointed to a High Court they have been for some 10 or 12 years in very important judicial positions. It is really untrue to say that men who have had that experience have not had a very considerable legal training, and indeed I might say more legal training than some barristers of 15 years experience have the good fortune to get." He conceded, however, that "as this court will have to deal almost exclusively with pure points of law there is a great deal to be said for the contention that the judge should be a person of legal training in the ordinary sense." The present provisions regarding the Chief Justice were subsequently incorporated.

III

An appeal may be brought to His Majesty in Council from a decision of the Federal Court— **Appeals to Privy Council**

(*a*) from any judgment of the Federal Court given in the exercise of its original jurisdiction in any dispute which concerns the interpretation of the Act or of an Order in Council made thereunder, or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of any State, or arises under an agreement made under the provisions of the Act in relation to the administration in any State of a law of the Federal Legislature, *without leave*; and **Sec. 208**

(*b*) in any other case, *by leave* of the Federal Court or of His Majesty in Council.

In their Report the Joint Parliamentary Committee recommended that "the jurisdiction of the Privy Council will extend to appeals involving rights and obligations arising under the Constitution Act, as well as the interpretation of the Act itself. Effect will be given to the decisions of the Federal Court, as is the case with decisions of the Privy Council, by the Courts from which the appeal has been brought; and all Courts within the Federation will be bound to recognise decisions of the Federal Court as binding upon themselves. We may perhaps point out that the jurisdiction of the Privy Council in relation to the States will be based upon the voluntary act of the Rulers themselves, i.e., their Instrument of Accession."*

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* The White Paper stated that Indian opinion was far from unanimous as to the necessity—or at all events as to the immediate necessity—for a Supreme Court of Appeal. The jurisdiction of such a Court, were it established, would necessarily be limited to British India, and its functions would be, within the limits assigned to it, to act as a final Court of **Establishment of a Supreme Court**

Sir Tej Bahadur's views

Sir Tej Bahadur Sapru explained the Indian point of view in his Memorandum to the Joint Committee. He said: "That there is a general demand for the establishment of a Supreme Court, seems to me to be without any doubt. I am at the same time bound to point out that opinion in Bengal is not favourable to it. The question was discussed at length at the Round Table Conference. The immediate establishment of the Supreme Court is opposed first, on the ground of finance and secondly, on the ground that it is not desirable to abolish the jurisdiction of the Privy Council. As regards the first no estimate has been prepared showing the impossibility of establishing the Supreme Court within reasonable limits of expenditure. I cannot believe that we can require as many as twenty

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Appeal in India from the decisions of the Provincial High Courts on matters other than those—mainly constitutional—which will fall within the jurisdiction of the Federal Court. With such a Court in existence, there would be good reason for limiting the right of appeal from Indian High Courts to the Judicial Committee of the Privy Council and thereby mitigating some of the grounds for dissatisfaction which arise from the delays, expense and inconveniences necessarily involved in the prosecution of appeals before so distant a tribunal.

Joint Committee negative proposal

The Joint Committee, on the other hand, said: "The White Paper proposes that the Federal Legislature should be empowered to establish a separate Supreme Court to hear appeals from the provincial High Courts (1) in civil cases and (2) in criminal cases where a death sentence has been passed, provided of course that an appeal did not lie to the Federal Court. We have given very careful consideration to this proposal, but we do not feel able to recommend its adoption. A Supreme Court of this kind would be independent of, and in no sense subordinate to, the Federal Court; but it would be impossible to avoid a certain overlapping of jurisdictions, owing to the difficulty of determining in particular cases whether or not a constitutional issue was raised by a case under appeal.

Court of Appeal recommended

There is much to be said for the establishment of a Court of Appeal for the whole of British India, but in our opinion this would be most conveniently effected by an extension of the jurisdiction of the Federal Court, and we think

to thirty judges for the Supreme Court. I should think that for some time to come a Court consisting of ten to twelve judges could adequately deal with appeals coming to it from the High Courts. Further, it may be pointed out that much of the cost will be met by fixing proper scales of Court fees. The highest number of appeals that come up to the Privy Council from India in any given year may roughly be put down at 100 to 125, though the number is generally less. It has never been suggested that the jurisdiction of the Privy Council should be abolished. Even in the case of the Dominions appeals come very frequently from Canada, and they come also, though less frequently from the other Dominions. What is suggested is that appeals should lie to the Privy Council only upon a certificate given by the Supreme Court.

"All that is aimed at, and all that should be aimed at, is to restrict the right of appeal to the Privy Council, to such decisions of the Federal Court as may involve really important questions relating to the interpretation of the Constitution Act, or any rights and obligations arising thereunder, in such appeals it may not always be possible to go by the pecuniary value of the matter involved in the case ; the true test should be the nature of the question involved, and no appeal should lie to

that the legislature should be empowered to confer this extended jurisdiction upon it. It is clear that there would have to be a strict limitation on the right of appeal, so as to secure that only cases of real importance came before the Court; and, if this were done, we see no reason why a comparatively small number of additional Judges should not suffice. Secondly, we assume that the Court would sit in two Chambers, the first dealing with federal cases, and the second with British India appeals. The two Chambers would remain distinct, though we would emphasise the unity of the Court by enabling the Judges who ordinarily sit in the Federal Chamber to sit from time to time in the other Chamber, as the Chief Justice might direct, or Rules of Court provide; but beyond this we do not think that the two Chambers should be interchangeable." (*Report*, pp. 195-196.)

Two Chambers

the Privy Council ordinarily, without the leave of the Federal Court. This will not, however, affect the right of the Privy Council to grant special leave in any case in which they may deem it fit to do so."*

Provision re: enlargement of appellate jurisdiction

On the recommendation of the Joint Committee it has been enacted that if the Federal Legislature makes provision for enlarging the appellate jurisdiction of the Court, the rules shall provide for the constitution of a special division of the Court for the purpose of deciding all cases which would have been within the jurisdiction of the Court even if its jurisdiction had not been so enlarged.

Sec. 214

IV

Power of Governor-General to consult Federal Court

It is provided that if at any time it appears to the Governor-General that a question of law has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Federal Court upon it, he may in his discretion refer the question to that Court for consideration, and the Court may, after such hearing as they think fit, report to the Governor-General thereon.

Sec. 213

But no such report shall be made save in accordance with an opinion delivered in open court with the concurrence of a majority of the judges present at the hearing of the case, but nothing in this provision shall be deemed to prevent a judge who does not concur from delivering a dissenting opinion.†

* *Records,* Vol. III, pp. 287-89.

† This clause was inserted on the motion of Lord Zetland. Lord Reading explained the issues involved in the adoption of

B. HIGH COURTS IN BRITISH INDIA

The High Courts

The following courts shall in relation to British India be deemed to be High Courts for the purposes of the Act, that is to say, the High Courts in Calcutta, Madras, Bombay, Allahabad, **Sec. 219**

the clause. He said : "The question on which the Governor-General is asking for advice is a question of law, purely law. It is only upon that that he goes to the Court. It is not on any question of fact; it is not on a question of discretion; it is only if it appears to him that a question of law has arisen or is likely to arise. Then he consults the Federal Court, just as here the Judicial Committee of the Privy Council can, under the Judicial Committee Act, be consulted. For my own part, I raise no objection to the publication. On the contrary it seems to me, if the Governor General has thought it right to ask the Federal Court to give its view upon a point of law, that decision ought to be known. I cannot imagine that any question could arise as to whether or not he should act upon it. The fact of whether he should do a particular thing or not is for him to decide. It has nothing to do with the Federal Court. The only question that goes to Federal Court is simply a question of law.

"I would like respectfully to suggest that they might take into consideration the effect, say, of the Attorney-General giving his views, and of their being published. I can see a number of difficulties arising, but I do not want to go into details. A question might arise as to who were the judges, whether they were British or English. That is the kind of thing you must avoid. You want the decision of the majority, and when the majority have given their opinion, that must prevail."

The Lord Chancellor (Viscount Hailsham) defending the proposal said : "This is not altogether a new proposal, though I agree that it is a new proposal in our own system of jurisprudence, because, unless my recollection is very much at fault—I am only speaking from recollection—when cases are argued at the International Court at The Hague a decision is given which is the judgment of the court by one member of the majority, but every judge who dissents has a right to express his dissent and to give the reasons for it. That is

Lahore and Patna, the Chief Court in Oudh, the Judicial Commissioner's Courts in the Central Provinces and Berar,* in the North-West Frontier Province and in Sind, any other court in British India constituted or reconstituted as a High Court, and any other comparable court in British India which His Majesty in Council may declare to be a High Court for the purposes of the Act.

Constitution

Sec. 220

Every High Court shall be a court of record and shall consist of a Chief Justice and such other Judges as His Majesty may from time to time deem it necessary to appoint. Every Judge shall be appointed by His Majesty by warrant under the Royal Sign Manual and shall hold office until he attains the age of sixty years.

Qualifications of Judges

A person shall not be qualified for appointment as a Judge of a High Court unless he—

(*a*) is a barrister of England or Northern Ireland, of at least ten years' standing, or a member of the Faculty of Advocates in Scotland of at least ten years' standing ; or

substantially the practice which is suggested in this Amendment and in the following clause as at present drafted. I think in one's experience of The Hague Court that has worked quite satisfactorily there, and there is something to be said for the view, if the Governor-General, for example, desires the opinion of the Federal Court on a grave and difficult question of law and that opinion is being publicly delivered, that it is not unreasonable that it should be possible for the Governor-General to know that the opinion was not unanimous and to know the reasons which actuated those who dissented from the view of the majority." (*Debates,* House of Lords, July 4, 1935.)

* Since the passing of the Act, a High Court has been established at Nagpur.

(*b*) is a member of the Indian Civil Service of at least ten years' standing, who has for at least three years served as, or exercised the powers of, a district judge ; or

(*c*) has for at least five years held a judicial office in British India not inferior to that of a subordinate judge, or judge of a small cause court ; or

(*d*) has for at least ten years been a pleader of any High Court, or of two or more such Courts in succession.

Qualifications of Chief Justice

With regard to the appointment of a Chief Justice, it is, however, provided that a person shall not, unless he is, or when first appointed to judicial office was, a barrister, a member of the Faculty of Advocates or a pleader, be qualified for appointment as Chief Justice of any High Court constituted by letters patent until he has served for not less than three years as a judge of a High Court.

Salaries etc. of Judges

Sec. 221

Regarding the salaries, allowances and rights in respect of leave of absence or pension of Judges of High Courts the provisions are similar to those in the case of Judges of the Federal Court.

Expenses of High Courts

Sec. 228

The administrative expenses of a High Court are to be charged upon the revenues of the Province, and the Governor shall exercise his individual judgment as to the amount to be included in respect of such expenses in any estimates of expenditure laid by him before the Legislature.

Extra-provincial jurisdiction

Sec. 230

A section dealing with 'extra-provincial' jurisdiction of High Courts provides that where the High Court exercises jurisdiction in relation to an area outside the Province in which it has its principal seat, then the Act shall not be interpreted as empowering the Legislature of that Province to increase or restrict the jurisdiction of the court, or prevent the Legislature from having power to make laws for that area. The Legislature having power to make laws for the area can pass laws in regard to the jurisdiction of the court. The section, it was explained, ensures that the arrange-

ment now in force in Bengal and Assam shall not be terminated except, say, on the initiative of the Assam Government.*

The two principal changes introduced by the Act relate to (a) the "provincialisation" of all High Courts,† and (b) the abrogation of the

* *Debates*, House of Commons, April 2, 1935.

† Sir Samuel Hoare in a Memorandum to the Joint Committee stated: "The question whether it is intended to federalise or provincialise the High Courts, can be answered under several heads: . . . . So far as composition and organisation of High Courts is concerned, the White Paper neither federalises nor provincialises. It removes questions of this nature from the competence of either the Federal or the Provincial Legislature and entrusts them to Parliament by amendment of the Constitution Act, or to the Crown by issue of Letters patent or Orders in Council.

"As regards jurisdiction in the sense of juridical competence, the proposal is that the power to regulate juridical jurisdiction should follow the power to regulate the substantive law to be interpreted. This proposal has been accepted by the Government of India as natural and logical.

"As regards powers and authority, it is proposed to make the general administrative authority of the kind now conferred by section 107 of the Government of India Act neither Federal nor Provincial, but to lay down its nature and scope and to confer it upon the Court once and for all in the Constitution Act itself. Particular powers and authority will be conferred upon the Court and regulated by the legislative authority which has competence in the matter to which they refer. For instance, all powers and authority which the High Courts may exercise under Provincial Civil Courts Acts will be Provincial; those which they exercise under the Code of Civil Procedure or the Code of Criminal Procedure, both of which fall in List III, will be Provincial or Federal according as the legislation undertaken is that of the Provincial or the Federal Legislature.

"As regards maintenance, the proposal is that this should be entirely a Provincial matter, but it is proposed, as already stated to give the Governor a personal authority to certify, after consultation with his Ministers, the amounts which he thinks are required for the expenses of these Courts.

existing statutory requirement that not less than one-third of the Judges of every High Court must be members of the Indian Civil Service, and not less than one-third must have been called to the English, Scottish or Irish Bar.

Principal departures from existing arrangements

The provisions regarding provincialisation, which affect especially the Calcutta High Court, which is at present under Central control, were very strongly opposed by the Calcutta Bar, the Bar Association and the Incorporated Law Society.*

"The present system of provincialisation has worked well in the past and has proved itself appropriate to the varying constitutional conditions. Finally, it might reasonably be held that since the administration of justice is essentially a Provincial subject, the Courts which administer it should be in relation with the Provincial executive authority." (*Records*, Vol. III, pp. 35-36.)

* It is significant that the Simon Commission was in favour of Central control over the High Courts. Of course, since then the proposal for the establishment of a Federal Government created a new situation.

Arguments in favour of Federal control

The Duchess of Atholl in supporting the proposal for federal control over the High Courts quoted the Memoranda of the Bengal, Bombay, Punjab and Madras High Courts to the Statutory Commission, emphasising the danger of executive interference. In the Bengal Memorandum, the Court reviewed the history of the Court for a period of nearly 60 years and pointed out how, on several occasions the head of the local government had attempted directly to interfere with the interference of this Court and of the courts over which this Court had superintendence. Therefore, they stated their expression of opinion against being transferred to the Provincial Government. They quoted the opinion of the late Mr. Justice Mookerji, who, on 1st September, 1921, wrote as follows : "In my opinion the continuance of the present state of things is impossible, as it is harmful in the highest degree and is calculated to impair very seriously the prestige and efficiency of the court. The present position is that in all financial matters we are subject to the control of the Government of Bengal,

Position of Civilian Judges

The absence of any mention of percentages of Civilian Judges is partially due to the difficulty mentioned in the Joint Parliamentary Committee's Report of getting such Judges in certain areas to fit in with the requirement. But this need not mean that there will be any marked change in the proportion of I. C. S. Judges. In fact, there is nothing to prevent an increase in the proportion.* The provision allowing I.C.S. Judges to officiate as Chief Justice is retained.

that is, of the Bengal Legislative Council. The dangers inseparable from such a position have been well illustrated by recent events".

The mover of the amendment in favour of federal control, in the House of Commons, (Mr. Ker) urged two principal grounds in favour of administrative control by the Federal Government. One of the chief reasons why the control should be with the Federal Government and not the Provincial Government, he urged, was that these Provincial High Courts tried cases not between the Federation and the Provinces, but between the residents of the Provinces, among themselves, and between the public in the Provinces and the Government of the Provinces. Therefore, it was important that the control should remain with the Government, which has no direct interest in the cases to be tried by it. He added : "The question would not be so much a financial question as one purely of accounting, because the High Courts are very largely self-supporting, the revenue derived is usually equal to the expenditure. If the financial question is to be taken into account, it rather tells in favour of the Amendment, because the finances of the Provinces are fluctuating and may be applied with considerable difficulty. For these reasons, therefore, because it is wanted by the people who are mostly affected by it, especially in Bengal, and because it will make the High Court independent, I move the Amendment." (*Debates*, House of Commons, April 2, 1935.)

* On this point the attitude of the Churchillite Conservatives and the Government as revealed in the speeches of Sir Reginald Craddock, ex-Governor of Burma and the Solicitor-General was that the I. C. S. Judges possessed a great deal

In the section dealing with 'temporary and additional judges', it is provided that if the office of any other Judge of a High Court becomes vacant, or if any such judge is appointed to act temporarily as a Chief Justice, or is by reason of absence, or for any other reason unable to perform the duties of his office, the Governor-General may in his discretion appoint a person duly qualified for appointment as a judge to act as a Judge of that Court.

Temporary and Additional Judges

Sec. 222

A special Committee of the General Council of the English Bar, acting upon opinion and information received 'from various sources, both from persons holding high judicial office in India, as well as by English and Indian members of the Bar practising out there and in England, and by prominent associations of

English Bar Council on proposed changes

of legal and practical training, that they had a 'much better understanding of the people of the country than any one of the pleader and barrister judges', and that they had to know the language of the people and they came to the High Court after dealing with all kinds of civil cases.

The Solicitor-General however mentioned an inconvenience felt increasingly in recent years regarding the one-third rule regarding I. C. S. judges. He added : "If you have a fixed percentage for certain members of a court, it very much restricts your choice when a fresh appointment has to be made, and there is this further undesirable rigidity, that if one, say, of your third of barristers retires or dies, you have to fill up his place with some one of the same category. It may be that you have an unusually large number of men of a certain standing among the Indian civil service ranks, and you want to take the opportunity of getting the right man, but you cannot do it because this percentage rule hampers you, in that you have to replace the man who has died or retired by a man of the same class. There are other reasons against the percentage rule. If you took the existing statutory provision of a third barristers, a third Indian civil servants, and so on, you would have to add the Indian pleaders. In conclusion I may say that, after all, the real safeguard for proper appointments is the nature of the appointing authority."

India and Burma' in their report mention two changes at least which will result from the proposed legislation, and which, in the view of the Bar Council, require serious reconsideration. The first relates to the lack of any qualification for the office of Chief Justice, as in the past.

Qualifications of Chief Justice

The Report characterises as "a most unwise and unnecessary change", that the qualifications required for a Chief Justice, should no longer be those of a trained and experienced lawyer, but that it should be open to the members of a Service for which no legal training is required. The history and traditions of the office seem to the Council to negative the idea that a change such as that contemplated is in the smallest degree necessary or desirable, in so far as the efficient administration of justice by the High Courts in India is concerned.

Freedom from Executive connection

The Council also feels that it is imperative in the interests of India, that the High Courts should form absolutely independent judicial tribunals, in no way connected with the Executive Government of that country.

Qualifications of Judges

The second relates to the qualifications of judges. The report of the English Bar committee express the opinion that it is a matter of extreme urgency that the High Courts in India should be so constituted under the new system, as to ensure that they will command the entire confidence of the many communities in India, as an absolutely independent judicial tribunal, and that what is now required on reconsideration is a revision of the original proportions under the Act of 1861, by (*a*) reducing and limiting the proportion of members of the Indian Civil Service, and (*b*) increasing that of trained lawyers, rather than leaving the whole question in the air, as the new Act seems to propose, by making no reference to that subject at all.

Sir Tej Bahadur's view

Sir Tej Bahadur Sapru also in his Memorandum observed that it would be unfortunate if the appointment of Chief Justice were thrown open to non-legal element. "The best traditions of the courts in India," he added, "have been built up by Judges recruited from the profession, men who have imbibed in the

exercise of their profession, and their surroundings in England, or by judges who have been recruited from the ranks of the profession in India. I should not be willing to accept any change in the law which would in any degree or measure affect the continuance of those traditions."

C. The Subordinate Judiciary

Independence of subordinate judiciary

The Joint Parliamentary Committee emphasise the 'necessity for securing the independence of the subordinate judiciary', a subject which was not mentioned in the White Paper. The Committee observe that nothing is more likely to sap the independence of a magistrate than the knowledge that his career depends upon the favour of a Minister. "Recent examples (not in India) have shown," they add, "very clearly the pressure which may be exerted upon a magistracy thus situated by men who are known, or believed, to have the means of bringing influence to bear upon a Minister. A strict rule ought in our opinion to be adopted and enforced, though it would be clearly out of place in the Constitution Act itself, that recommendations from, or attempts to exercise influence by, members of the Legislature in the appointment or promotion of any member of the Subordinate Judiciary are sufficient in themselves to disqualify a candidate, whatever his personal merits may be."

It is provided that the appointment, posting and promotion of District Judges* in any

* The expression "district judge" includes additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, sessions judge, additional sessions judge, and assistant sessions judge.

District Judges

Province is to be made by the Governor of the Province, exercising his individual judgment. The High Court, however, is to be consulted before a recommendation as to the making of any such appointment is submitted to the Governor.

Sec. 254

Appointment of District Judges

The Joint Parliamentary Committee also recommended that in the case of District Judges or additional District Judges, the first appointment should, if the candidate is a member of the Indian Civil Service, be made by the Governor on the recommendation of the Minister, after consultation with the High Court. A District Judge should only be promoted (except in the case of automatic time scale promotions) on a recommendation by the Minister after consultation with the High Court ; and the same rule should apply to postings. In all such cases, the Governor is to have a discretion to reject a recommendation if he does not concur with it.

Subordinate Civil Judicial Service

In the case of Subordinate Judges and Munsiffs, the Governor in his individual judgment, after consultation with the Public Service Commission and with the High Court, shall make rules defining the standard of qualifications for candidates seeking to enter the Judicial Service.* Candidates are to be selected for appointment by the Public Service Commission, subject to any general regulations made by the Provincial Governor as to the observance of communal proportions.

Sec. 255

The Public Service Commission would of course act in an advisory capacity only, but a Minister would not ordinarily reject their advice or recommend an appointment without it.

The Provincial Public Service Commission for each province, after holding such examinations, if any, as

* The subordinate civil judicial service is defined as meaning "a service consisting exclusively of persons intended to fill civil judicial posts inferior to the post of district judge."

the Governor may think necessary, are required from time to time to make a list or lists of the persons whom they consider fit for appointment to the subordinate civil judicial service. Appointments are to be made by the Governor from the persons included in the list or lists in accordance with such regulations as may from time to time be made by him as to the number of persons in the said service who are to belong to the different communities in the Province.

The posting and promotion of, and the grant of leave to, persons belonging to the subordinate civil judicial service of a Province, and holding any post inferior to that of District Judge, will be in the hands of the High Court. Any such person, however, will have the right of appeal provided by the Act.

Regarding the subordinate criminal magistracy, no recommendation regarding powers shall be made without consulting the District Magistrate concerned. **Sec. 256**

Referring to these departures, Sir Tej Bahadur Sapru had urged that the appointment, selection, promotion and control of judicial officers should be transferred to the High Courts. This could, in his opinion, secure the appointment of right men, and should also effectively prevent the evils of patronage.

CHAPTER EIGHT

SYSTEM OF PUBLIC FINANCE

1. Federal Finance

Allocation of sources of revenue between Federation and units

"In any Federation the problem of the allocation of resources is necessarily one of difficulty, since two different authorities (the Government of the Federation and the Governments of the Units) each with independent powers, are raising money from the same body of taxpayers. The constitutional problem is simplified if it is possible to allocate separate fields of taxation to the two authorities, but the revenues derived from such a division, even where it is practicable, may not fit the economic and financial requirements of each party; neither do these requirements necessarily continue to bear a constant relation to each other, and yet it is difficult to devise a variable allocation of resources." Thus write the Joint Committee in broaching the question of federal finance. The Committee add that no entirely satisfactory solution of this problem has yet been found in any federal system.

The existing system in British India

The Joint Committee, in describing the present financial position, state: "So far as British India is concerned the problem is not a new one. Though the separation of the resources of the Government of India and the Provincial Governments under the existing Constitution is in legal form merely an act of statutory devolution, which can be varied by the Government of India and Parliament at any time, nevertheless from the practical financial point of view there is already in existence in British India a federal system of finance.

Determined to avoid the inconveniences which had already been experienced from a system of 'doles' from the Centre to the Provinces or from a system of heads of revenue shared between the two parties, the authors of the present Constitution (of 1919), adopted an almost completely rigid separation of the sources of revenue assigned respectively to the Centre and to the Provinces. From the point of view of expenditure, the essentials of the position are that the Provinces have an almost inexhaustible field for the development of social services, while the demands upon the Centre, except in time of war or acute frontier trouble, are more constant in character. The Provinces have rarely had means adequate for a full development of their social needs, while the Centre, with taxation at a normal level, has no greater margin than is requisite in view of the vital necessity for maintaining unimpaired both the efficiency of the defence services and the credit of the Government of India, which rests fundamentally upon the credit of India as a whole, Centre and Provinces together. But the resources of the Centre comprise those which should prove most capable of expansion in a period of normal progress."

Its results

The past experience of the existing system leads to two conclusions on which there is general agreement ; (*a*) that there are a few Provinces where the available sources of revenue are never likely to be sufficient to meet any reasonable standard of expenditure ; and (*b*) that the existing division of heads of revenue between the Centre and Provinces leaves the Centre with an undue share of those heads which respond most readily to an improvement in economic conditions.*

Problems of federal finance

The Joint Committee divide the subject of federal finance into two parts; first, the allocation of the sources of revenue between the Federation and the Units: and second, the

* For a lucid discussion of the existing financial position and its results, see Sir Walter Layton's Report on Indian Finance (Part VIII, Vol. II, *Report of Indian Statutory Commission*, 1930).

additional expenditure involved by the proposed constitutional changes. In the allocation of taxes, certain difficulties present themselves.

Effect of entry of States

The Committee assume that the entry of the States has removed one serious grievance. "The incidence of the sea customs duties is upon the consumers in the Indian States and the consumers in British India alike; but the States have no say under the present system in the fixing of the tariff. With the continued rise for many years past in the level of the import duties, the States have pressed more and more for the allocation to them of a share in the proceeds of these duties. With their entry into the Federation the States will take part in the determination of the Indian tariff, and their claim to a separate share in the proceeds disappears. But if their entry removes this major problem, it introduces another, though less formidable, complication. It is obviously desirable that, so for as possible, all the Federal Units should contribute to the resources of the Federation on a similar basis. Broadly speaking, no difficulty arises in the sphere of indirect taxation which constitutes some four-fifths of the central revenues; the difficulty arises over direct taxation, that is to say, taxes on income. If the Federation retains the whole of taxes on income, as the Centre does at present, it would be natural to require that the subjects of the federating States should also pay income-tax and that the proceeds (or part thereof) should be made available for the federal fisc. The States have made it plain that they are not prepared to adopt any plan of this kind."

Difficulty of equitable allocation

Moreover: "Some of the federal expenditure will be for British-India purposes only, such as subsidies to deficit British-India Provinces; there has also been controversy on the question whether the service of part of the pre-Federation debt should not fall on British India alone; and further, part of the proceeds of taxes on income is derived from subjects of Indian States, *e.g.*, holders of Indian Government securities and shareholders in British India companies. The States also make a contribution in kind to defence of which there is no counterpart in the Provinces of British

India. It seems to us both unnecessary and undesirable to attempt any accurate balancing of these factors or to determine on a basis of this kind what share of the income-tax could equitably be retained by the Federation. It will be wiser to base the division upon the financial and economic needs of the Federation and the Units." Following the pessimistic note struck by the Percy (Federal Finance) Committee, the Joint Committee observe that the Federal Centre is unlikely, at least for some time to come, to be able to spare much, if anything, by way of fresh resources for the Provinces, apart from the pressing needs of deficit areas.*

Financial situation and reforms

The Joint Committee, however, set their face against the suggestion made in some quarters that constitutional change should be postponed until the financial horizon was clear. They note that the additional difficulties attributable to the change (and such as they are, they relate mainly to Provincial Autonomy and

Dr. P. N. Banerjea on the proposals

* "From the very commencement of British rule in India a proper balance has been lacking in the financial system of the country. Large sums of money have been spent annually on the Army and the Police; but niggardly treatment has always been meted out to subjects like sanitation, medical relief, agricultural improvement, and industrial advancement, while unemployment insurance and old age pensions have never found any place in any of the Government budgets. The most essential need of the present moment, therefore, is the development of the nation building services. These services being under the control of the Provincial Governments, it is necessary to set them firmly on their feet by placing adequate resources at their disposal. As additional taxation is inconceivable at the present moment, the funds for this purpose will have to be obtained by retrenchment in the central budget particularly under the head 'Defence'. Until a proper balance is imparted to the financial system it will be too much to expect either progress or contentment in the country." (Dr. Pramathanath Banerjea, M.L.A., formerly Minto Professor of Economics, Calcutta University, in the *Modern Review*, January, 1935.)

not to Federation) are but a small part of the financial problem which has in any event to be faced.* "No doubt", they add, "before the new Constitution actually comes into operation. His Majesty's Goverment will review the financial position and inform Parliament how the matter stands. On this point, as we have said, Parliament must at the appropriate time receive a direct assurance from His Majesty's Government."

Certain principles only laid down in the Act

Many of the details of the financial arrangements relating to the allocation of shares in the income tax and the jute export duty, the amount of subvention to be granted to individual Provinces, etc., have been left to be decided on the basis of the recommendations resulting from Sir Otto Nieymeyer's enquiry. Further, the arrangements regarding maritime customs, the administration of certain economic services by the States, remission of States' contributions, etc., remain to be determined in accordance with the provisions of the Instrument of Accession of every federating State. The Act, however, lays down certain principles.

It is provided that the following duties and taxes are to be leived and collected by the Federation :—

Succession & stamp duties, terminal taxes, etc.

(*a*) Duties in respect of succession to property other than agricultural land ; (*b*) such stamp duties as are mentioned in the Federal Legislative List, that is to say, stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of

* Reference may be made to the Financial Memorandum by Sir Malcolm Hailey and observations thereupon by Sir Samuel Hoare, presented to the Joint Committee. (*Records*, Vol. III.)

credit, policies of insurance, proxies and receipts; (*c*) terminal taxes on goods or passengers carried by railway or air; (*d*) taxes on railway fares and freights. **Sec. 137**

But the net proceeds in any financial year of any such duty or tax, except in so far as they represent proceeds attributed to Chief Commissioners' Provinces, shall not form part of the revenues of the Federation, and shall be assigned to the Provinces and to the Federated States, if any, within which such duty or tax is leviable in that year, and be distributed among the Provinces and those States in accordance with such principles of distribution as may be formulated by an Act of the Federal Legislature.

Surcharges for Federal purposes

Power is, however, given to the Federal Legislature at any time to increase such duties or taxes by a surcharge for Federal purposes. The whole proceeds of any such surcharge are to form part of the revenues of the Federation.

Provincial claim to income-tax

The claim to income tax by the Provinces has received an added impetus from the attitude of the Indian States in the matter of direct taxation. In the discussions at the Round Table Conference a plan was evloved by which, in the main, almost all the taxes on income were to be assigned to the Provinces, the resulting deficit in the Federal Budget being made up for the time being by contributions from the Provinces. Such contributions were to be gradually reduced and would finally disappear. This scheme was examined in detail by the Federal Finance Committee, but was subsequently abandoned.

White Paper proposal

The proposal, in this connection, made in the White Paper was that a prescribed percentage, not being less than 50 per cent. nor more than 75 per cent. of the net revenue derived from taxes on income,

should be assigned to the Governors' Provinces. It was suggested that this arrangement, with such modifications as might be found necessary, should in due course be extended to State members of the Federation. Further, it was proposed that for each of the first three years after the commencement of the Act, the Federal Government should be entitled to retain in aid of Federal revenues, out of the moneys which would otherwise be assigned to the Provinces (the amount distributed to the Provinces being correspondingly reduced), a sum to be prescribed, and for each of the next seven years, a sum which should be in any year less than that retained in the previous year by an amount equal to one-eight of the sum originally prescribed. But the Governor-General was to be empowered in his discretion to suspend these reductions in whole or in part if, after consulting the Federal and Provincial Ministers, he was opinion that their continuance for the time being would endanger the financial stability of the Federation.

Joint committee on percentage and time-table

The Joint Committee, however, see little or no prospect of the possibility of fixing a higher percentage than 50 per cent., and they consider that there is an obvious difficulty in prescribing in advance a time-table for the process of transfer, even though power is reserved to the Governor-General to suspend it. The facts indicated that for some time to come the Centre was unlikely to be able to distribute any substantial part of the taxes on income. The Committee prefer to leave the actual period for the process of transfer, which the White Paper proposed should be three and seven years, to be determined by Order in Council in the light of circumstances at some convenient date.

Taxes on income

It is laid down that taxes on income other than income from agricultural land shall be levied and collected by the Federation, but a prescribed percentage of the net proceeds
Sec. 138 in any financial year of any such tax other than a corporation tax, except in so far as those proceeds represent proceeeds attributable to

Chief Commissioners' Provinces or to taxes payable in respect of Federal emoluments, shall not form part of the revenues of the Federation, but shall be assigned to the Provinces and to the Federated States, if any, within which that tax is leviable in that year, and shall be distributed among the Provinces and those States in such manner as may be prescribed by His Majesty in Council.

It is further provided that the percentage of income-tax proceeds earmarked for Provinces and Federated States will be fixed by Order in Council. Once fixed, it cannot be increased by any subsequent Order, so as to diminish the Central resources and necessitate a Federal surcharge.*

The Federation may, however, retain out of moneys assigned to Provinces and States by this section—

(*a*) in each year of a prescribed period such sum as may be prescribed ; and

(*b*) in each year of a further prescribed period a sum less than that retained in the preceding year by

* The above provisions were criticised by Dr. P. N. Banerjea on the publication of the Joint Committee's Report, as follows : "The Provinces will find it impossible to accept this position, for their needs are urgent, and they cannot wait indefinitely in the hope that something will turn up in future. Unless it be possible to spend adequate sums of money for the development of nation-building services in the Provinces, the new Constitution will prove an even more disastrous failure than the Montagu-Chelmsford Reforms. It is curious that, while the Joint Committee are so unsympathetic to the older Provinces, they do not hesitate to recommend large subventions for newly-created Provinces or Provinces which are to come into existence in future." (*Modern Review*, January, 1935.)

an amount, being the same amount in each year, so calculated that the sum to be retained in the last year of the period will be equal to the amount of each such annual reduction:

Provided that (*i*) neither of the periods originally prescribed shall be reduced by any subsequent Order in Council; (*ii*) the Governor-General in his discretion may in any year of the second prescribed period direct that the sum to be retained by the Federation in that year shall be the sum retained in the preceding year, and that the second prescribed period shall be correspondingly extended, but he shall not give any such direction except after consultation with such representatives of Federal, Provincial and State interests as he may think desirable, nor shall he give any such direction unless he is satisfied that the maintenance of the financial stability of the Federal Government requires him so to do.

Where an Act of the Federal Legislature imposes a surcharge for Federal purposes under this section, the Act shall provide for the payment by each Federated State in which taxes on income are not leviable by the Federation of a contribution to the revenues of the Federation assessed on such basis as may be prescribed.

Corporation tax and States

Sec. 139

With regard to Corporation tax * also the States are placed in a favourable position. The Act provides that Corporation tax shall not be levied by the Federation in any Federated State until ten years have elapsed from the establishment of the Federation. Any State which prefers that companies subject to the law of the State should not be directly taxed, may reserve the right to contribute an equivalent sum to the

* Corporation Tax is defined as meaning "any tax on such of the income of companies as does not represent agricultural income being a tax to which the enactments requiring or authorising companies to make deductions in respect of income tax from payments of interest or dividends, or from other payments representing a distribution of profits, have no application."

Federal fisc. In such a case the officers of the Federation shall not have any right to call for any returns or information from any corporation in the State, but a duty is placed on the Ruler of the state to cause to be supplied to the Auditor-General of India such information as the latter may reasonably require. If the Ruler of a State is dissatisfied with the determination as to the amount of the contribution payable by his State in any financial year, he may appeal to the Federal Court.

The Joint Committee accept the proposal of the White Paper that the existing Corporation Tax should be retained by the Federation and that after ten years the tax should be extended to the States, a right being reserved to any State to make a lump sum contribution in lieu of the imposition of the tax. The Committee express themselves as opposed to the White Paper proposals regarding the levy of surcharges by the provinces on the ground that it may lead to differential rates on the inhabitants of different provinces. This restriction is likely to handicap many Provinces specially in times of financial stringency.

Share to Provinces of salt tax, jute export duty, etc.

In order to impart a certain amount of elasticity to the system of financial allocation, the Joint Committee agree to the proposal to allot, when the financial situation permits in future, to the Federal Units shares of the yield of the salt tax as well as of the excise and export duties. The circumstances of the jute-producing Provinces are so special that the Committee have no hesitation in approving of the proposal to assign to them at least one-half of the proceeds of the jute export duty. In this connection the Committee admit that Bengal has "undoubtedly suffered severely under the existing plan of allocation", but they refrain

from considering the demand of the Province for the entire proceeds of the tax.*

Interest of the Provinces in the Federal Budget

"The fact that the Federal Units either will, or may, share in the yield from certain federal taxes implies," write the joint committee, "that the Federal Budget cannot be the concern of the Federal Government and Legislature alone. This may result in some blurring of responsibility, and from the point of view of constitutional principle is open to objection; but we see no escape from it. In order to bring about mutual consultation between Federation and Units in matters of this kind the White Paper proposes that Federal legislation upon them should require the prior assent of the Governor-General to be given only after consultation with both the Federal Ministry and the Governments of the Units."

The Act provides that no Bill or amendment is to be introduced or moved in either Chamber of the

Salt duties, excise duties, export duties

* It is laid down that duties on salt, Federal duties of excise and export duties shall be levied and collected by the Federation, but, if an Act of the Federal Legislature so provides, there shall be paid out of the revenues of the Federation to the Provinces and to the Federated States, if any, to which the Act imposing the duty exends, sums equivalent to the whole or any part of the net proceeds of that duty, and those sums shall be distributed among the Provinces and those

Sec. 140 States in accordance with such principles of distribution as may be formulated by the Act.

Notwithstanding anything in the preceding paragraph, one half, or such greater proportion as His Majesty in Council may determine, of the net proceeds in each year of any export duty on jute or jute products shall not form part of the revenues of the Federation, but shall be assigned to the Provinces or Federated States in which jute is grown in proportion to the respective amounts of jute grown therein.

Federal Legislature, except with the previous sanction of the Governor-General in his discretion, which

Prior sanction of Governor-General re :- taxation proposals affecting Provinces

(*i*) imposes or varies any tax or duty in which Provinces are interested, *i.e.*, a tax or duty the whole or part of the net proceeds whereof are assigned to any Province ; or

(*ii*) varies the meaning of the expression agricultural income as defined for the purposes of the enactments relating to Indian income-tax ;

(*iii*) affects the principles on which moneys are or may be distributable to Provinces or States ; or

Sec. 141

(*iv*) imposes a Federal surcharge.

It is further provided that the Governor-General shall not give his sanction to the introduction of any Bill or the moving of any amendment imposing in any year any such Federal surcharge unless he is satisfied 'that all practicable economies and all practicable measures for otherwise increasing the proceeds of Federal taxation or the portion thereof retainable by the Federation would not result in the balancing of Federal receipts and expenditure on revenue account in that year.'

Grants from Federation to certain Provinces

Following the recommendations of the Joint Committee, it has been provided that such sums as may be prescribed by His Majesty in Council shall be charged on the revenues of the Federation in each year as grants in aid of the revenues of such Provinces as His Majesty may determine to be in need of assistance and different sums may be prescribed for different Provinces.

Sec. 142

Except in the case of the North West Frontier Province, no grant fixed under this section shall be increased by a subsequent Order, unless an address has been presented to the Governor-General by both Chambers of the Federal Legislature for submission to His Majesty praying that the increase may be made.

Duty to supply Secretary of State with funds

Sec. 157

The Federation and every Province shall secure that there are from time to time in the hands of the Secretary of State sufficient moneys to enable him to make such payments as he may have to make in respect of any liability which falls to be met out of the revenues of the Federation or of the Province as the case may be.

Adjustment in respect of certain expenses and pensions

Sec. 156

Where under the provisions of the Act the expenses of any court or commission, or the pension payable to or in respect of a person who has served under the Crown in India, are charged on the revenues of the Federation or the revenues of a Province, then if—

(*a*) in the case of a charge on the revenues of the Federation, the court or commission serves any of the separate needs of a Province, or the person has served wholly or in part in connection with the affairs of a Province ; or

(*b*) in the case of a charge on the revenues of a Province, the court or commission serves any of the separate needs of the Federation or another Province, or the person has served wholly or in part in connection with the affairs of the Federation or another Province,

there shall be charged on and paid out of the revenues of the Province or, as the case may be, the revenues of the Federation or of the other Province, such contribution in respect of the expenses or pension as may be agreed, or as may in default of agreement be determined by an arbitrator to be appointed by the Chief Justice of India.

2. Crown and the States : Financial Relations

The entry of the States into the Federation, apart from some of the questions already referred to, involves some complicated financial adjustments, mainly in respect of tributes and ceded

territories; but these, though of importance to individual States, do not fundamentally affect the Federal finance scheme as a whole. The problems were exhaustively examined in the Report of the Indian States Enquiry Committee (Financial), 1932, which was presided over by Mr. J. C. C. Davidson. The Joint Committee endorse the main principles of that Report, and in particular the proposal of the gradual abolition over a period of years (corresponding to the period during which it is proposed to defer the full assignment to the Provinces of a share of the taxes on income) of any contribution paid by a State to the Crown which is in excess of the value of the immunities which it enjoys.

Expenses of Crown re: Indian States

Accordingly, the Act lays down that there shall be paid to His Majesty by the Federation in each year the sums stated by His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States to be required, whether on revenue account or otherwise, for the discharge of those functions, including the making of any payments in respect of any customary allowances to members of the family or servants of any former Ruler of any territories in India. **Sec. 145**

Payments from or by Indian States

All cash contributions and payments in respect of loans and other payments due from or by any Indian State which, if the Act of 1935 had not been passed, would have formed part of the revenues of India, shall be received by His Majesty, and shall, if His Majesty has so directed, be placed at the disposal of the Federation, but nothing in this Act shall derogate from the right of His Majesty, if he thinks fit so to do, to remit at any time the whole or any part of any such contributions or payments. **Sec. 146**

Remission of States' contributions

His Majesty may, in signifying his acceptance of the Instrument of Accession of a State, agree to remit over a period not exceeding twenty years from the date of the accession of the State

Sec. 147 to the Federation any cash contributions payable by that State.

Subject as aforesaid, where any territories have been voluntarily ceded to the Crown by a Federated State before the passing of this Act—(*a*) in return for specific military guarantees, or (*b*) in return for the discharge of the State from obligations to provide military assistance, there shall, if His Majesty, in signifying his acceptance of the Instrument of Accession of that State, so directs, be paid to that State, (but in the first-mentioned case on condition that the said guarantees are waived) such sums as in the opinion of His Majesty ought to be paid in respect of any such cession as aforesaid.

Every such agreement or direction shall be such as to secure that no such remission or payment shall be made by virtue of the agreement or direction until the Provinces have begun to receive moneys according to the provisions relating to taxes on income, and, in the case of a remission, that the remission shall be complete before the expiration of twenty years from the date of the accession to the Federation of the State in question, or before the end of the second prescribed period. No contribution shall be remitted by virtue of any such agreement save in so far as it exceeds the value of any privilege or immunity enjoyed by the State. In fixing the amount of any payments in respect of ceded territories, account shall be taken of the value of any such privilege or immunity.

His Majesty may agree that the capital sum or sums paid in cash contributions, the liability for which has been discharged by payment of a capital sum or sums, shall be repaid either by instalments or otherwise, and such repayments shall be deemed to be remissions for the purposes of this section.*

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* Cash contributions refer to :—

(*a*) periodical contributions in acknowledgment of the suzerainty of His Majesty, including contributions payable in connection with any arrangement for the aid and protection of a State by His Majesty, and contributions in commutation of any obligation of a State to provide military assistance to His

"It is greatly to be desired," observe the Joint Committee, "that States adhering to the Federation should like the Provinces, accept the principle of internal freedom for trade in India and that the Federal Government alone should have the power to impose tariffs and other restrictions on trade." Many states, however, derive substantial revenues from customs duties levied at their frontiers on goods entering the State from other

Joint Committee on Land customs duties imposed by States

Majesty, or in respect of the maintenance by His Majesty of a special force for service in connection with a State, or in respect of the maintenance of local military forces or police, or in respect of the expenses of an agent;

(*b*) periodical contributions fixed on the creation or restoration of a State, or on a re-grant or increase of territory, including annual payments for grants of land on perpetual tenure or for equalisation of the value of exchanged territory;

(*c*) periodical contributions formerly payable to another State but now payable to His Majesty by right of conquest, assignment or lapse.

Privileges of States

"Privilege or immunity" means any such right, privilege, advantage or immunity of a financial character, (which is not a right, privilege, advantage or immunity surrendered upon the accession of the State, or one which, in the opinion of His Majesty, for any other reason, ought not to be taken into account), that is to say—

(*a*) rights, privileges or advantages in respect of, or connected with, the levying of sea customs or the production and sale of untaxed salt;

(*b*) sums receivable in respect of the abandonment or surrender of the right to levy internal customs duties, or to produce or manufacture salt, or to tax salt or other commodities or goods in transit, or sums receivable in lieu of grants of free salt;

(*c*) the annual value to the Ruler of any privilege or territory granted in respect of the abandonment or surrender of any such right as is mentioned in the last preceding paragraph;

(*d*) privileges in respect of free service stamps or the free carriage of State mails on government business;

(*e*) the privilege of entry free from customs duties of goods imported by sea and transported in bond to the State in question; and

(*f*) the right to issue currency notes.

parts of India. But as the Committee say, internal customs barriers are in principle inconsistent with the freedom of interchange in a fully developed Federation. They strongly express the opinion that every effort should be made to substitute other forms of taxation for these internal customs. But in any case, in the opinion of the Committee, the accession of a State to the Federation should imply its acceptance of the principle that it will not set up a barrier to free interchange so formidable as to constitute a threat to the future of the Federation. "If, there should be any danger of this," add the Committee, "we think that the powers entrusted to the Governor-General in his discretion would have to be brought to bear upon the States". Referring to the 'most difficult and serious' of the problems, *viz.*, that of the maritime States in relation to sea customs, the Committee state: "The general principle which we should like to see applied in the case of the maritime States which have a right to levy sea customs is that they should be allowed to retain only so much of the customs duties which they collect as is properly attributable to dutiable goods consumed in their own State ; but we recognise that treaty rights may not make it possible in all cases to attain this ideal. But if insistence upon treaty or other rights in any particular case makes such an arrangement (perhaps with certain adjustments or modifications) impossible, then it seems to us that the question will have to be seriously considered whether the State could properly be admitted to the Federal system."

States' maritime customs

3. Borrowing and Audit

Borrowing by Federal Government

Sec. 162

Except borrowing in sterling, the executive authority of the Federation extends to borrowing upon the security of the revenues of the Federation within such limits, if any, as may from time to time be fixed by Act of the Federal Legislature and to the giving of guarantees within such limits if any, as may be so fixed.

The executive authority of a Province extends to borrowing upon the security of the

Borrowing by Provincial Government

Sec. 163

revenues of the Province within such limits, if any, as may from time to time be fixed by the Act of the Provincial Legislature and to the giving of guarantees within such limits.

The Federation may, subject to such conditions, if any, as it may think fit to impose, make loans to, or, so long as any limits fixed under the last preceding section are not exceeded, give guarantees in respect of loans raised by, any Province and any sums required for the purpose of making loans to a Province shall be charged on the revenues of the Federation. A Province may not without the consent of the Federation borrow outside India, nor without the like consent raise any loan if there is still outstanding any part of a loan made to the Province by the Federation or by the Governor-General in Council, or in respect of which a guarantee has been given by the Federation or by the Governor-General in Council.*

Loans by Federation to Federated States

Sec. 164

The Federation may, subject to such conditions, if any, as it may think fit to impose, make loans to or, so long as any limits fixed by the Act are not exceeded, give guarantees in respect of loans raised by, any Federated State.

Auditor General of India

Sec. 166

The Act also provides that there shall be an Auditor-General of India, who shall be appointed by His Majesty and shall only be removed from office in like manner and on the like grounds as a judge of the Federal Court.

The conditions of service of the Auditor-General shall be such as may be prescribed by

* On the question of provincial borrowing, the Joint Committee accept the White Paper proposals, subject to an additional proviso, *viz.*, that in case the Federal Ministry refuses the application of a Province for permission to raise a loan or insists on unreasonable conditions, the ultimate decision shall rest with the Governor-General in his discretion. The acceptance of this suggestion adds a further power to those already placed in the hands of the Governor-General.

His Majesty in Council, and he shall not be eligible for further office under the Crown in India after he has ceased to hold his office. Neither the salary of an Auditor-General nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment.

The Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Federation and of the Provinces as may be prescribed by, or by rules made under, an Order of His Majesty in Council, or by any subsequent Act of the Federal Legislature varying or extending such an Order;—provided that no Bill or amendment for the purpose aforesaid shall be introduced or moved without the previous sanction of the Governor-General in his discretion.

The salary, allowances and pension payable to or in respect of an Auditor-General shall be charged on the revenues of the Federation and the salaries, allowances and pensions payable to or in respect of members of his staff shall be paid out of those revenues.

Provincial Auditor-General

Sec. 167

If a Provincial Legislature after the expiration of two years from the commencement of Provincial Autonomy passes an Act charging the salary of an Auditor-General for that Province on the revenues of the Province, an Auditor-General of the Province may be appointed by His Majesty to perform the same duties and to exercise the same powers in relation to the audit of the accounts of the Province as would be performed and exercised by the Auditor-General of India, if an Auditor-General of the Province had not been appointed.

No appointment, however, of an Auditor-General in a Province shall be made until the expiration of at least three years from the date of the Act of the Provincial Legislature by which provision is made for an Auditor-General of that Province.

A person who is, or has been, Auditor-General of a Province shall be eligible for appointment as Auditor-General of India. The Auditor-General of India shall have the power to give necessary directions in respect to the accounts of Provinces.

Audit reports

Sec. 169

The reports of the Auditor-General of India relating to the accounts of the Federation shall be submitted to the Governor-General, who shall cause them to be laid before the Federal Legislature, and the reports of the Auditor-General of India or of the Auditor-General of the Province, as the case may be, relating to the accounts of a Province shall be submitted to the Governor of the Province, who shall cause them to be laid before the Provincial Legislature.

Auditor of Indian Home Accounts

Sec. 170

There shall be an Auditor of Indian Home Accounts who shall be appointed by the Governor-General in his discretion and shall only be removed from office in like manner and on the like grounds as a judge of the Federal Court.

The conditions of service of the Auditor of Indian Home Accounts shall be such as may be prescribed by the Governor-General in his discretion ; provided that neither the salary of an Auditor of Indian Home Accounts nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment.

The Auditor of Indian Home Accounts shall be subject to the general superintendence of the Auditor-General of India.

Audit of accounts re: discharge of functions in relation to Indian States

The accounts relating to the discharge of the functions of the Crown in its relations with Indian States shall be audited by the Auditor-General of India, or, in so far as those accounts concern transactions in the United Kingdom, by the Auditor of Indian Home Accounts acting on his behalf and under his general superintendence, and the Auditor-General of India shall make to the Secretary of State annual reports on the accounts so audited by him or on his behalf.

Sec. 171

These provisions thus transfer the control of India accounts from Great Britain to India.*

4. Burma

His Majesty in Council may make such provision as may appear to him to be necessary or proper for defining and regulating the relations between the monetary systems of India and Burma and for purposes connected

* "At present, Audit in India, both Central and Provincial, is carried out by a staff under the Auditor-General. He is appointed by the Secretary of State in Council, who also frames rules defining his powers and duties. In India, Accounts and Audit are carried out by a combined staff, so that the Auditor-General has functions in relation to Accounts as well as to Audit. An experiment was tried in recent years in one Province of separating Accounts from Audit but was abandoned on the ground of expense. There is at present no constitutional provision requiring the report of the Auditor-General to be laid before the Legislature in India, though in fact this is done. Audit of the Accounts of the Secretary of State is carried out by the Auditor of Indian Home Accounts who, in accordance with Section 27 (1), Government of India Act, is appointed by the Crown by warrant countersigned by the Chancellor of the Exchequer. His report is by statute presented to Parliament. It has also been found convenient to use the services of the Home Auditor to audit expenditure by the High Commissioner." (*J.P.C. Report*, Vol. I, Part I, para. 396.)

with or ancillary to those purposes. In particular, but without prejudice to the generality of this section, such provision may be made as may appear to His Majesty to be necessary or proper for the purpose of giving effect to any arrangements with respect to the said matters made before the commencement of the Provincial part of this Act with the approval of the Secretary of State by the Governor of Burma in Council with the Governor-General in Council or any other persons. Any sums required by an Order under this section to be paid by the Federation shall be charged on the revenues of the Federation.

Monetary relations between Burma and India

Sec. 158

With a view to preventing undue disturbance of trade between India and Burma in the period immediately following the separation of India and Burma and with a view to safeguarding the economic interests of Burma during that period, His Majesty may by Order in Council give such directions as he thinks fit for those purposes with respect to the duties which are while the Order is in force, to be levied on goods imported into or exported from India or Burma and with respect to ancillary and related matters. Continuance of the *status quo* for a period of three years has been, for the present, arranged.

Provisions as to customs duties on Indo-Burma trade

Sec. 160

Power is also given to His Majesty in Council to make provision for contributions out of the revenues of Burma to the revenues of the Indian Federation, if it appears that the distribution of property and liabilities, effected between India and Burma, may result in an undue burden on Indian Revenues.* Similarly, His Majesty in Council may make provision for the grant of relief from any Federal income-tax on income taxed or taxable in Burma and *vice versa*.

Contribution from Burma

Relief re: double taxation

Sec. 159

* *Vide, Government of Burma Act*, 1935, Chapter XI (Miscellaneous Provisions as to Relations with India).

CHAPTER NINE

THE SERVICES OF THE CROWN IN INDIA

1. Defence.

Imperial control over Defence

Secs. 4, 232, 233 & 235

Besides the appointment of a Commander-in-Chief of His Majesty's forces in India,* the Act provides for the control of His Majesty in Council over defence appointments, and the control of the Secretary of State, acting with the concurrence of his Advisers,† with regard to conditions of service. It is also enacted that rights of appeal enjoyed immediately prior to the passing of the Act shall remain. Indian defence will thus continue to be under the supreme control of the Secretary of State.

Defence is one of the departments specifically 'reserved'. Self-government, it has often been urged, without an effective army is an impossibility.‡ The Act

* The Commander-in-Chief will be the Counsellor of the Governor-General in matters relating to defence, and will act as the Governor-General's spokesman in the Federal Legislature.

† This clause was inserted at the instance of Sir Alfred Knox who was an officer in the Indian Army, and Sir Henry Page-Croft. They expressed their apprehensions as to what future Secretaries of State might do and thought that "it would be an advantage if they could give their decisions regarding rules for the Indian Army with the concurrence of their advisers." (*Debates*, House of Commons, April 2, 1935.)

‡ For instance by Prof. A. B. Keith. (Quoted in the Nehru Report, 1928, p. 12). The Nehru Report pointed out that no Dominion had satisfied this condition before constitutional changes had been introduced.

does not make any provision for the Indianisation of the army within any specified period. As Sir Tej Bahadur Sapru points out, the Thomas Sub-committee on Defence at the First Round Table Conference recommended that with the development of the new political structure in India, the Defence of India must to an increasing extent be the concern of the Indian people, and not of the British alone. They also urged that immediate steps be taken to increase substantially the rate of Indianization in the Indian Army, and a training college be established to train candidates for commissions in all arms of the Indian Defence Services.*

Defence: 'concern of Indian people'

The Joint Committee refer to the suggestion put forward in the British Indian Memorandum that there should be a definite programme of Indianization with reference to a time limit of 20 or 25 years, and that one of the primary duties of an Indian Army Counsellor should be the provision and training of Indian officers for the programme of Indianization. The Joint Committee thought that it was impossible to include in the Constitution Act or in other statute a provision for the complete Indianization of the Army within a specified period of time. The scheme introduced in 1931 provides for the Indianization of the equivalent of one Cavalry Brigade and one Infantry Division complete with all arms and ancillary services. The Committee were assured that this had been initiated by the military authorities in India with the fullest sense of their responsibility in the matter and that further developments would depend upon the success of the experiment. "If the experiment succeeds," the Joint Committee state, "the process will be extended and developed.†

Joint Committee on Indianization

Eligibility for Commissions in Indian Forces

Sec. 234

Commenting on the character of the present army, a writer points out that though an overwhelming propor-

* There is now an Indian Air Force and Navy. The Indian Naval Discipline Act, 1934, provides for the replacement of the Royal Indian Marine by a naval force with a position partly analogous to that of the Dominion forces. The force is small and has no distinctive flag; it flies the White Ensign. The ratio of Indianization is two British to one Indian. (Keith; *Governments of the British Empire*, p. 594.)

† When Sir Tej Bahadur Sapru was a member of the

Non-national character of Army in India

tion of the personnel of the Army in India is furnished by India, 'the armed forces under the Government of India are Indian in one sense only—in that their cost is borne by the people of India'. He summarises the non-national character of the Army under eight heads: (1) It is not controlled by Indians; (2) it is recruited from certain parts of India only (more than half the personnel being furnished by the Punjab and the North-West Frontier Province with parts of Kashmir, and about a quarter by the hilly tracts of Garhwal, Kumaon and Nepal); (3) even within the areas from which the Army is normally recruited there is a strict regulation of the quotas to be furnished by each district, tribe, caste or sect; (4) not only is the Indian Army recruited from a limited number of carefully selected classes, but its whole internal organisation is based on a rigid caste system and these groups are so arranged that they retain their tribal or communal loyalties; (5) Indians in the Army lead an insulated life breeding mutual suspicion between the soldiers and the civil population; (6) the Army in India is partly constituted of units of the British Army, and till quite recently (under the Indian Military College scheme of 1931) Indians were not employed in all its arms, making it impracticable for Indians in the Army to fight a campaign by themselves; (7) inspite of recent moves towards Indianization, the leadership of the Army is to all intents and purposes purely British; and (8) the function of the Army, as Lord Curzon pointed out long ago, is largely imperial and not merely national.*

Governor-General's Council, a 30-year scheme of Indianization was formulated but was turned down by the Home Authorities.

The J. P. C. Report also mentions the practical difficulties consequent upon a wholesale substitution of British by Indian personnel, and due to the "difference between the martial and other races of India"—both of which arguments have been fully met in the minute of Sir Sivaswamy Aiyar and Major-General Rajwade to the *Report of the Indian Military College Committee* (1931).

* N. C. Chaudhary: *Defence of India* (Swaraj Bhavan, Allahabad, 1935). Regarding the provisions in the New Consti-

2. Civil Services

I

"The system of responsible government, to be successful in practical working, requires the existence of a competent and independent Civil Service staffed by persons capable of giving to successive Ministries advice based on long administrative experience, secure in their positions during good behaviour, but required to carry out the policy upon which the Government and the Legislature eventually decide....The question has another and scarcely less important aspect; for we are convinced that India for a long time to come will not be able to dispense with a strong British element in the Services, and the conditions of service must be such as to attract and hold the best type of man, whether

Joint Committee on the position of Civil Service

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tution relating to defence, the same writer states: "From the Indian point of view, the special responsibility of the Governor-General in regard to defence can only be admitted if it is in India's interest, if it is exercised only because Indians are not ready just at this moment to take over the Department of Defence, and, above all, if there is provided at the same time the necessary machinery for the natural transfer of the responsibility at the end of the transitional period. The provisions in the New Constitution satisfy none of these requirements. They provide for an autocracy on the reserved side at the centre which will be untempered even by the limited degree of influence over policy which is now exercised by the Indian members of the Governor-General's Council, and thus are a definite retrogression of the state of affairs as they are at present." (See also the comments of the British Indian Delegation and of Mr. Rhys Davies M.P. quoted in pp. 199-201.)

British or Indian. Parliament may, therefore, rightly require, in the interests of India as well as of this country, not only that the services are given all reasonable security, but that none is deterred from entering them by apprehensions as to his future prospects and career."*

Tenure of office of persons employed in Civil capacities in India

Sec. 240

The Act lays down that every person who is a member of a civil service of the Crown in India, holds office during His Majesty's pleasure. No such person shall be dismissed from the service of His Majesty by any authority subordinate to that by which he was appointed. Nor shall any such person be dismissed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. This provision shall not apply—

(*a*) where a person is dismissed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge ; or

(*b*) where an authority empowered to dismiss a person or reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause.

Recruitment and conditions of service

Sec. 241

Appointments to the civil services of, and civil posts under the Crown in India, shall after the commencement of the Provincial part of the Act, be made—

(*a*) in the case of services of the Federation, and posts in connection with the affairs of the Federation, by the Governor-General or such person as he may direct ;

(*b*) in the case of services of a Province, and posts in connection with the affairs of a Province, by the Governor or such person as he may direct.

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* *J. P. C. Report*, Vol. I, Part I.

The conditions of service of persons serving His Majesty in a civil capacity in India shall, subject to the provisions of this section, be such as may be prescribed—

(*a*) in the case of persons serving in connection with the affairs of the Federation, by rules made by the Governor-General or by some person or persons authorised by the Governor-General to make rules for the purpose ;

(*b*) in the case of persons serving in connection with the affairs of a Province, by rules made by the Governor of the Province or by some person or persons authorised by the Governor to make rules for the purpose.

Acts of the appropriate Legislature in India may regulate the conditions of service of persons serving His Majesty in a civil capacity in India, provided that nothing in any such Act shall have effect so as to deprive any person of any rights required to be given to him under the Government of India Act, 1935.

Special provisions as to Police forces

The conditions of service of the subordinate ranks of the various police forces in India shall be such as may be determined by or under the Acts relating to those forces respectively.

Sec. 243

Sex shall not be regarded as a disqulification for being appointed to any civil service, or civil post, under the Crown in India, unless specially excluded by any order by the appropriate authority.

II

Position of All-India, Central and Provincial Services

Regarding the principles governing the status and rights of the All-India, Central and Provincial services, the Joint Committee state :

"Under the new constitution all the powers of the Provincial Governments, including the power to recruit public servants and to regulate their conditions of service, will be derived no longer by devolution from the Government of India, but directly by delegation

from the Crown, *i.e.* directly from the same source as that from which the Secretary of State derives his powers of recruitment. The Provincial Services, no less than the Central Services and the Secretary of State's Services will, therefore, be essentially Crown Services.

Governor-General and Governors' special responsibility re: services

"The Governor, as the personal representative of the Crown and the head of the Executive Government, has a special relation to all the Crown Services. He will, indeed, be generally bound to act in that relation on the advice of his Ministers, subject to his special responsibility for the rights and legitimate interests of the Services, but his Ministers will be no less bound to remember that advice on matters affecting the organisation of the permanent executive services is a very different thing from advice on matters of legislative policy, and that the difference may well affect both the circumstances and the form in which such advice is tendered. We think, therefore, that the Constitution should contain in its wording a definite recognition of the Governor-General and the Governors respectively as, under the Crown, the heads of the Central (as distinct from the All-India) and Provincial Services."

Equalisation of rights of different services recommended

The Committe urge that the status and rights of Central and Provincial services should not be inferior to those of All-India services and point out the desirability of Provincial Legislatures passing Provincial Civil Service Acts authorising and requiring the Executive to offer the services not only the existing rights of the members but also a reinforcement of others enjoyed by officers appointed by the Secretary of State.

III

Indemnity for past acts

Provision is made for the grant of indemnity for past acts. The Joint Committee write : "In view of threats which have been made in certain quarters especially against the Police, we think that it is justifiable to give this

measure of protection to men who have done no more than their duty in very difficult and trying circumstances. But we think that the certificate by the Governor-General or Governor, as the case may be, ought to be made conclusive on the question of good faith."

No proceedings civil or criminal shall be instituted against any person in respect of any act done or purporting to be done in the execution of his duty as a servant of the Crown in India or Burma before the relevant date, except with the consent, in the case of a person who was employed in connection with the affairs of the Government of India or the affairs of Burma, of the Governor-General in his discretion and in the case of a person employed in connection with the affairs of a Province, of the Governor of that Province in his discretion. **Sec. 270**

Any civil or criminal proceedings instituted against any person in respect of any act done or purporting to be done in the execution of his duty as a servant of the Crown in India or Burma before the relevant date shall be dismissed unless the court is satisfied that the acts complained of were not done in good faith. Where any such proceedings are dismissed the costs incurred by the defendant shall, in so far as they are not recoverable from the persons instituting the proceedings, be charged, in the case of persons employed in connection with the functions of the Governor-General in Council or the affairs of Burma, on the revenues of the Federation, and in the case of persons employed in connection with the affairs of a Province, on the revenues of that Province.

For the purposes of the section, the relevant date means, in relation to acts done by persons employed about the affairs of a Province, the commencement of Provincial autonomy and, in relation to acts done by persons employed about the affairs of the Federation, the date of the establishment of the Federation.

Further, provision is made for the protection of public servants against prosecution and suits, particularly conferred by section 197 of

Protection of public servants against prosecution

the Code of Criminal Procedure and sections 80-82 of the Code of Civil Procedure. Reimbursement of any cost incurred in defending suits by a public servant in respect of any act purported to be done by him in his public

Sec. 271 capacity, is also provided for.*

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* This section was added at the suggestion of Sir Alfred Knox. The Solicitor-General in moving its insertion observed :—

Solicitor-General on protection to public servants

"The Clause deals with the position of judges, magistrates or officials against whom criminal or civil proceedings may be initiated. There should be certain provisions, to some extent carrying on the existing provisions of the law, and to some extent supplementing them, to meet the new position inserted in the Bill. The first sub-section, it will be seen, provides that Bills which either abolish or restrict certain sections of the code of the criminal and civil procedure shall not be introduced without the previous sanction of the Governor-General or of the Governor acting in his respective discretion. The section of the Code of Criminal Procedure says that no prosecutions against a judge or magistrate or official of a certain locality shall be initiated without the leave of the local Government. It also gives the local Government powers to direct what court shall hear a prosecution as well as other matters with regard to procedure.

"Sub-section (2) provides that in exercising the power under that Clause, that is to say, in deciding whether or not a prosecution shall go forward, the Governor-General or Governor has the last word, or the final decision will be by the Governor-General or the Governor in his individual judgment. We accordingly provide, in sub-section (3) of the Clause, that so far as any costs or damages may be awarded against a public official, the question as to whether they should be defrayed out of the public purse, is a matter which, in the last resort, will rest with the Governor-General or the Governor. Here again we do not anticipate differences. We believe that Indian Ministers will be as anxious to stand behind their officials, in all proper cases, as would the Governor-General or the Governor, but we provide that, in the last resort, the Governor-General or the Governor shall decide." (*Debates*, House of Commons, April 29, 1935.)

IV

Elaborate provisions are contained in the Act regarding the payment of pensions, their exemption from Indian taxation, and regarding the Family Pension Funds. **Pensions etc.**

It is laid down that pensions of persons appointed to a civil service by the Secretary of State are to be charged upon the revenues of the Federation. Estimates of expenditure relating to pensions will, therefore, not be submitted to the vote of the Legislature. If the money required for paying pensions is not actually available, the Secretary of State may, if he considers it necessary, instruct the Governor-General to borrow in sterling in London on the security of the revenues of India.* **Pensions of persons appointed by the Secretary of State** **Sec. 247**

Pensions of retired officers and the pensions of their dependants are exempted from Indian **Exemption from Indian Taxation**

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* It will be remembered that a special responsibility is placed on the Governor-General, acting upon his individual judgment in respect of 'securing to, and the dependants of, persons who are or have been members of the public services of any rights provided or preserved for them by or under this Act and the safeguarding of their legitimate interests'.

Mr. Rhys Davies pointed out that "there are pensions payable in one category alone to 3,917 military officers, 603 Indian medical officers and 151 officers of the Indian Royal Marine, making a total of 4,671 who receive annually over £2,000,000 in pensions from the Indian revenues. There are 789 pensioners from the Indian Civil Service, 50 ex-judges of the High Court, 75 members of the pilot service, and two bishops. Then there are uncovenanted services pensions. There are 2,862 of these who receive pensions for uncovenanted services. These pensioners total 3,778, and the amount payable for the year ending 31st March, 1934 was £1,818,000. Then there were 158 ecclesiastical gentlemen who received £70,000 per annum." (*Debates*, House of Commons, April 8, 1935.)

Sec. 272 taxation if the pensioner is residing permanently outside India.*

The Act contains detailed provisions regarding the administration of the several Family Pension Funds by Commissioners who may be appointed by Order in Council. Sir Samuel Hoare also assured the Joint Committee that the Funds were to be administered in 'accord as closely as possible with the views expressed by subscribers'.†

V

Recruitment by Secretary of State

The Secretary of State is to continue to make appointments to the civil services known as the Indian Civil Service, the Indian Medical Service (Civil) and the Indian Police Service, until Parliament otherwise determines. He is also authorised to make appointments to any service or services which he may deem it necessary to establish for the purpose of securing the recruitment of suitable persons to fill civil posts in connection with the discharge of any functions of the Governor-General which the Governor-General is by or under the Act required to exercise in his discretion. (Sec. 244)

Special provision re: irrigation

For the purpose of securing efficiency in irrigation in any Province, the Secretary of State is similarly empowered to appoint persons

* The British Indian Delegation put forward the idea that pensions should be subject to an Indian tax. That will not mean that civil servants coming back to England and living there should pay a double tax, because under the double income tax arrangement they pay the income tax of the country in which they live, which is later apportioned between the respective Governments.

† *Memorandum by the Secretary of State for India* (25 July, 1934), on the "Action Contemplated in relation to Family Pension Funds." (*Records*, Vol. II, pp. 308 *et seq.*)

to any civil service, or civil post under the Crown in India. Sec. 245

British Indian Delegation on recruitment by Secretary of State

The British Indian Delegation expressed their very strong objection to this part of the scheme, which was, it may be noted, not in accordance with the recommendations of the Services Sub-Committee of the Round Table Conference. They said: "We consider that, after the passing of the Constitution Act, recruitment for the Central Services should be by the Federal Government and for the Provincial Services, including the Indian Civil Service and the Indian Police, should be by the Provincial Governments, who should have full power to determine the pay and other conditions of service for future recruits and also the proportion of Europeans that should be recruited. There would thus be a very substantial European element in the two key Services for another generation, even if European recruitment were completely stopped after the passing of the Act."

White paper proposal of enquiry rejected

The Joint Committee while not accepting the White Paper proposal of a statutory enquiry after five years into the question of future recruitment for these services, at the same time endorse the principle that the whole matter should be the subject of a further enquiry at a later date; but past experience leads them "to doubt the wisdom of fixing a definite and unalterable date for the holding of an enquiry of this kind".

Proportion of Indians in services

There is no proportion laid down regarding the appointment of Indians *vis-a-vis* British officers. It is provided that the respective strengths of the said services shall be such as the Secretary of State may from time to time prescribe, and the Secretary of State shall in each year cause to be laid before each House of Parliament a statement of the appointments made thereto and the vacancies therein. Certain posts are to be specified by rules, made by the Secretary of State, as Reserved Posts. Sec. 244

Reserved posts

Sec. 246

Promotion, leave, and suspension of civil servants recruited by Secretary of State

Detailed provisions are laid down regarding the conditions of service, etc., of persons recruited by the Secretary of State. Any promotion of any person appointed to a civil service or a civil post by the Secretary of State *or any order relating to leave of not less than three months of any such person, or any order* suspending any such person from *office* shall, if he is serving in connection with the affairs of the Federation, be made by the Governor-General exercising his individual judgment and, if he is serving in connection with the affairs of a Province, be made by the Governor exercising his individual judgment.*

Sec. 247

'Accruing rights' & compensation

Provision is made for the granting of compensation to any civil servant appointed by the Secretary of State in Council before the passing of the Act, whose conditions of service have been adversely affected by it. The Secretary of State is also empowered to award compensation to any officer appointed by him in any other case in which he considers it to be just and equitable that compensation should be awarded. Compensation awarded under the provisions of this section is to be paid out of the revenues of the Federation, or, if the Secretary of State so directs, out of the revenues of a Province.

Sec. 249

Compensation to specialists

A non-member of a civil service appointed because of his special qualifications, may further be given the right of compensation, if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post.

Sec. 240

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* The italicised portion was inserted on a motion in the House of Lords, the mover urging that "while we have every confidence in rules which the Secretary of State may make, we have slightly less confidence in the application of those rules by Indian Ministers. We would respectfully suggest that it is neither right nor wise that responsible officials can be suspended by Indian Ministers without appeal to the Governor." (*Debates*, House of Lords, July 18, 1935.)

Rights in respect of appeals, complaints etc.

The Joint Committee summarise the more important conditions of service which will be secured to all officers appointed by the Secretary of State as follows :

Sec. 248

(*a*) a right of complaint to the Governor or Governor-General against any order from an official superior affecting his conditions of service ;

(*b*) a right to the concurrence of the Governor or Governor-General to any order of posting or to any order affecting emoluments or pensions, and any order of formal censure ;

(*c*) a right of appeal to the Secretary of State against orders passed by an authority in India—

(1) of censure or punishment,

(2) affecting disadvantageously his conditions of service, and

(3) terminating his employment before the age of superannuation ;

(*d*) regulation of his conditions of service (including the posts to be held) by the Secretary of State, who will be assisted in his task by a body of Advisers, of whom at least one-half will have held office for at least ten years under the Crown in India ;

(*e*) the exemption of all sums payable to him or to his dependants from the vote of either Chamber of the Legislatures.

The Memorandum of the British Indian Delegation in stating the Indian view-point observed :

British Indian Delegation's comments

"We have no objection to the proposal that the pensions, salaries, and the privileges and rights relating to dismissal or any other form of punishment or censure should, in the case of the existing members of the All-India Services, be fully safeguarded by the Constitution. We consider, however, that the Governor-General in his discretion (*not* the Secretary of State in Council) should be the statutory authority for the protection of these rights and privileges. We realise that the Governor-General acting in his discretion is responsible to the Secretary of State, and that constitutionally there would be very little change. Indian public

opinion, however, attaches great importance to this formal change, which would be more in keeping with the rest of the Constitution. Our objection is mainly to the rights and privileges which operate as restrictions on ministerial responsibility. We foresee many administrative developments. We, therefore, consider that there should be no restriction on the Ministers as regards postings, allocation of work, reorganisation of services and functions, and other matters which relate to the enforcement of policy and the efficiency of administration. The Ministers should also have the power of abolishing individual appointments now held by members of the All-India Services, subject to right of compensation in certain cases on the lines indicated in the evidence of the Secretary of State."*

3. Public Service Commissions

Federal and Provincial Commissions

Sec. 264

Provision is made for the establishment of Federal and Provincial Public Service Commissions. Provision is also made whereby the same Provincial Commission will be enabled to

* Under section 258 (1), provision is made for the protection of officers now serving. Civil posts in a Central Service Class I, a Central Service Class II, a Railway Service Class I, a Railway Service Class II or Provincial Service are not to be abolished if their abolition would adversely affect any person who, immediately before the commencement of Provincial autonomy, was a member of any such service. Power is given, however, to the Governor-General and the Governors, exercising their individual judgments, to abolish posts in connection with the affairs of the Federation and Provinces respectively.

In addition, section 258 (2) enacts that the Governor-General and the Governors alone are authorised to make rules or orders which adversely affect the pay, allowances or pensions of any person who was serving in a Central Service Class I, a Railway Service Class I or a Provincial Service before the commencement of Provincial autonomv.

serve two or more Provinces jointly; or alternatively, it will be open to a Province to make use of the services of the Federal Public Service Commission, subject to an agreement with the Federal authorities.*

Their Composition

The chairman and other members of a Public Service Commission shall be appointed, in the case of the Federal Commission, by the Governor-General in his discretion,† and in the case of Provincial Commissions, by the Governor of the Province in his discretion. At least one- Sec. 265

Sir Tej Bahadur on the character of Public Service Commissions

* Sir Tej Bahadur in his Memorandum to the Joint Committee stated: "These Commissions should be absolutely independent bodies free from all political influences, possessing definite powers and discharging definite functions. . . . . I personally hold that while the Constitution should provide for the appointment of Public Service Commissions and possibly also for the qualifications of members to be appointed to them, the powers reserved to the Secretary of State . . . . should be transferred to the Federal Government or at any rate to the Governor-General acting at his discretion for a short period not exceeding five years, after which the powers should devolve upon the Federal Government. The position taken in the White Paper in regard to the Public Service Commission does not seem to me to be in the nature of any advance upon the present position as laid down in Section 96C of the Government of India Act." (*Records*, Vol. III, pp. 286-287.)

Type of Members sought

† The change to "Governor-General in his discretion" for Secretary of State was accepted by Sir Samuel Hoare as it was pointed out that this did not involve any substantial change. The mover of the amendment said: "The Governor-General in his discretion would, almost of necessity, consult the Secretary of State. The Governor-General, I take it, is representing His Majesty's Government and the India Office and he would take steps to see that these appointments were made in accordance with the views of the Government and the India Office." (*Debates*, House of Commons, April 8, 1935).

half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years under the Crown in India.*

Functions of Public Service Commissions

It will be the duty of the Federal and Provincial Public Service Commissions to conduct examinations for appointments to the services of the Federation and the Provinces respectively.

Sec. 266

The Secretary of State, the Governor-General and the Governors shall have the power to frame regulations with respect to appointments made by each of them in their discretion. Subject to such regulations these Commissions are to be consulted—

(*a*) on all matters relating to methods of recruitment to civil services and for civil posts ;

(*b*) on the principles to be followed in making appointments to civil services and posts, and in making promotions and transfers from one service to another, and on the suitability of candidates for such appointments, promotions or transfers ;

(*c*) on all disciplinary matters affecting a person serving His Majesty in a civil capacity in India, including memorials or petitions relating to such matters ;

* Sir Samuel Hoare indicated who would be eligible for these posts when he said : "First, as to the period of years, I have no strong views as between 10 or 15. I am, however, advised that 10 has this great advantage, that a judge gets his pension at the end of 10 years, and a judge is very often just the type of man that we want to retain for this service in India before he returns to England. It is not our intention that ex-Ministers should be eligible for these posts. We have words that, on the one hand, would keep out politicians and, on the other hand, would allow judges to be in." (*Debates*, House of Commons, April 8, 1935.)

(*d*) on any claim by or in respect of a person who is serving or has served His Majesty in a civil capacity in India that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the revenues of the Federation or, as the case may be, the Province ;

(*e*) on any claim for the award of a pension in respect of injuries sustained by a person while serving His Majesty in a civil capacity in India, and any question as to the amount of any such award.

But, it is made clear that a Public Service Commission shall not have to be consulted with respect to the manner in which appiontments and posts are to be allocated as between the various communities in the Federation or a Province or, in the case of the subordinate ranks of the various police forces in India, regarding matters mentioned in (*a*), (*b*) and (*c*) above.

The Governor-General or, as the case may be, a Governor, may refer any other matter to a Public Service Commission.

Expenses of Public Service Commissions

The expenses of the Federal or a Provincial Public Service Commission, including any salaries, allowances and pensions payable to or in respect of the members or staff of the Commission, shall be charged on the revenues of the Federation or, as the case may be, the Province.* **Sec. 268**

Power to extend functions of Public Service Commissions

* An Act of the Federal Legislature or a Provincial Legislature may provide for the exercise of additional functions by the Federal Public Service Commission or, as the case may be, the Provincial Public Service Commission. A proviso adds, however, that—

(*a*) no Bill or amendment for such a purpose shall be introduced or moved without the previous sanction of the Governor-General in his discretion or, in the case of a Provincial Legislature, of the Governor in his discretion; and

(*b*) it shall be a term of every such Act that the functions conferred by it shall not be exercisable— **Sec. 267**

(*i*) in relation to any person appointed to a service or a post by the Secretary of State or the Secretary of

4. Communal Proportions in Public Services

A Resolution of the Government of India dated the 4th July, 1934, commonly known as 'Communal Award No. 2', contains certain deatils regarding appointments in the services not laid down in the Act itself.

Redress of Communal inequalities

The Government of India, after carefully reviewing the results of the policy followed since 1925 of reserving a certain percentage of direct appointments to Government service for the redress of communal inequalities, express their agreement with the view that it has failed to secure for Muslims their due share of appointments.

The Resolution contains special instructions regarding recruitment of Muslims, and also in certain departments regarding the employment of Anglo-Indians and domiciled Europeans. Regarding other minorities also provision is made for 'a reasonable degree of representation in the services'.

All-India Services

For the Indian Civil Service and the Central and Subordinate Services, to which recruitment is made on an all-India basis, 25 per cent. of all vacancies to be filled by direct recruitment of Indians will be reserved for Muslims and $8\frac{1}{3}$ for other minority communities. The percentage of $8\frac{1}{3}$ reserved for other minorities will not be distributed among them in any fixed proportion, and if suitable candidates are not available from 'the other minority communities', the residue will be available for Muslims.

State in Council, any officer in His Majesty's forces, or any holder of a reserved post, except with the consent of the Secretary of State: or

(*ii*) where the Act is a Provincial Act, in relation to any person who is not a member of one of the services of the Province, except with the consent of the Governor-General.

Provincial Services

In the case of all services to which recruitment is made by local areas and not on all-India basis, there shall be a reservation of 25 per cent. for Muslims and 8 per cent. for Anglo-Indians and another 6 per cent. for other minorities. This total reservation will be obtained by fixing a percentage for each local area having regard to the population ratio of Muslims and other minority communities in the area, and the rules for recruitment adopted by the Local Government of the area concerned. In addition, supplementary special provisions are made regarding particular departments, *e.g.* Post and Telegraph Department, Customs service, etc.*

* *Records*, Vol. II

CHAPTER TEN

THE SECRETARY OF STATE, HIS ADVISERS, AND THE HIGH COMMISSIONER

Incompatibility of control by India Council with Reforms

The White Paper appropriately pointed out that the Secretary of State in Council of India, was a conception which was "manifestly incompatible alike with Provincial Self-Government and with a responsible Federal Government". The Joint Committee also acknowledged that under a system of responsible government in India, the Secretary of State in Council was an anomaly. It would no longer be necessary, for example, with the transfer of responsibility for finance to Indian Ministers, that there should continue to be a body in the United Kingdom with a statutory control over the decisions of the Secretary of State in financial matters. In order to avoid the inconsistency between the doctrine of ministerial responsibility and the existence of certain of the powers of the Secretary of State in Council, the Council of India, as existing immediately before the establishment of Provincial Autonomy, shall be dissolved.*

Abolition of India Council

Sec. 278 (8)

Labour amendment

* Labour members of the Committee, however, moved to introduce a radical change. They moved to insert the following in the Report: "We should like to see Indian affairs brought at once under the Dominions Office. Failing this, and as a step in this direction, we recommend the merging of the India Office into a new office with a Secretary of State for the self-governing parts of the British Commonwealth of Nations in

As already noted, the Act provides that "any rights, authority and jurisdiction . . . . . heretofore exercisable in or in relation to any territories in India" by the Secretary of State or the Secretary of State in Council shall vest in the Crown.

I

A Body of Advisers to Secretary of State

Sec. 278 (1)

The Joint Select Committee, agreeing with the White Paper, further declared that it was still desirable that the Secretary of State should have a small body of Advisers to whom he might turn for advice on financial and service matters and on matters which concerned the Political Department.

Functions and composition

"We concur, therefore, in the proposal in the White Paper," state the Committee "that the Secretary of State should be empowered to appoint not less than three nor more than six persons for the purpose of advising him, of whom two at least must have held office for at least ten years under the Crown in India. The Secretary of State will be free to seek their advice, either individually or collectively, on any matter as he may think fit, but will not be bound to do so save in one respect only. It is proposed that, so long as he remains the authority charged with the control of any members of the Public Services in India, he must lay before his Advisers, and obtain the concurrence of a

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the East. This would include not only India but Ceylon, Burma, if separated, and other portions of the British Empire in the East as and when they become self-governing." [Moved by Mr. Attlee, Mr. Cocks, Mr. Morgan Jones and Lord Snell; J.P.C. *Proceedings*, Vol. I, Part II, p. 425]. This motion however was disagreed to.

It is significant that half a century ago the Indian National Congress at its very first session at Bombay expressed the opinion that the abolition of the Council of the Secretary of State for India, as at present constituted, was the necessary preliminary to all other reforms. (Bombay Session, 1885; re-affirmed in the Session of 1894).

majority of them to, the draft of any rules which he proposes to make under the Constitution Act for the purpose of regulating conditions of service, and any order which he proposes to make upon an appeal to him from any member of the service, which he controls. These proposals in effect preserve to the Services the safeguards which they at present enjoy through the Council of India, and we have only three suggestions to make with regard to them.

Qualifications of Advisers

Sec. 278 (2)

"We think in the first place that the service of the Advisers who are required to have held office for at least ten years under the Crown in India should not have terminated more than two years before their appointment ; secondly, it seems to us reasonable in the circumstances that at least half of the Advisers should have the Service qualification ; and, thirdly, in order to secure that, in matters where the concurrence of the majority of his Advisers will be required, the Secretary of State shall be an effective participant in their deliberations, it seems desirable to us that the Secretary of State shall, in case of equality of votes, have a second or casting vote."* These proposals have been given effect to in the Act.

Tenure of Advisers

Sec. 278 (3) (a)

Salary

Sec. 278 (5)

An Adviser to the Secretary of State shall hold office for five years and shall not be eligible for reappointment and shall not be a member of Parliament. There shall be paid out of moneys provided by Parliament to each of the advisers of the Secretary of State a salary of £1350 a year, and also to any of them who at the date of his appointment was domiciled in India, a subsistence allowance of £600 a year.†

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* Sir Tej Bahadur Sapru in his Memorandum to the Joint Committee expresses the opinion that for the limited purposes for which their advice would be sought, the number of Advisers was too great.

† The present salary is £12000.

The following excerpt from the proceedings of the House of Lords throws light on the position of the Council during the transition :—

Lord Rankeillour : May I ask the Secretary of State a question? I think it is provided elsewhere that this reduces

It is provided that with the introduction of Provincial Autonomy, the salary of the Secretary of State and the expenses of his Department, including the salaries and remuneration of the staff thereof shall be paid by the British Exchequer, and the number and terms of appointment of the officers and servants of the Secretary of State shall be subject to the consent of the Treasury. The Federal Government shall have to pay to the British Treasury sums in respect of so much of the expenses of the department of the Secretary of State as is attributable to the performance on behalf of the Federation of such functions as it may be agreed between the Secretary of State and the Governor-General that that department should so perform. The change from the financial point of view therefore is not material to India.

India office Expenses

Sec. 280

II

Consequent upon the change in the position of the Secretary of State, he is empowered to determine with regard to property vested in His Majesty and under his control, whether after the commencement of Provincial Autonomy, they shall vest in His Majesty (*a*) for the purposes of the Government of the Federation, (*b*) for the purposes of the exercise of the functions of the Crown in its relations with Indian States, or (*c*) for the purposes of the Government of a Province.

Redistribution of control over property

Sec. 175

All contracts made in the exercise of the executive authority of the Federation or of a Province are to be expressed to be made by the Governor-General, or by the Governor of the Province, as the case may be. It

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the number of Councillors. Will they have the same powers as the present Council during the transitional period?

The Marquess of Zetland: Yes, during the transitional period.

Lord Rankeillour: The same powers as now?

The Marquess of Zetland: Yes. (*Debates*, House of Lords, 8 July, 1935).

Power to acquire property and make contracts

Sec. 175

is provided that neither the Governor-General, nor a Governor, nor the Secretary of State shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Act or of any other Act relating to the Government of India. The same protection extends to any other persons who may be directed or authorised to enter into a contract on their behalf.

Existing financial liabilities

Sec. 178

Loans, guarantees and other financial obligations of the Secretary of State which were outstanding immediately before the commencement of the Provincial part of the Act, and were secured on the revenues of India, become from that date the liabilities of the Federation and are secured upon the revenues of the Federation and of all the Provinces. In respect of other contracts made before that period by or on behalf of the Secretary of State in Council, as from that date—

Other contracts made before Introduction of Provincial autonomy

Sec. 177

(1) the contracts which were in connection with the affairs of a Province are to have effect as if they had been made on behalf of that Province ; and

(2) in any other case, they are to have effect as if they had been made on behalf of the Federation.*

Pending suits

Sec. 179

Where a cause of action arose before the commencement of Provincial autonomy, which might have been brought against the Secretary of State in Council, the plaintiff may proceed against the Federation or the Province according to the subject matter of the proceedings, or, at his option, against the Secretary of State.

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* The Government of India Act 1919, section 32 (1) and (2), had provided that the Secretary of State in Council could sue and be sued in the name of the Secretary of State in Council as a body corporate. Litigants will have the same remedies against the Secretary of State in Council as they would have had against the East India Company, if neither the Government of India Act 1858, nor the Government of India Act, 1919, had been passed.

III

There shall be a High Commissioner for India in the United Kingdom who shall be appointed, and whose salary and conditions of service shall be prescribed, by the Governor-General, exercising his individual judgment. The High Commissioner shall perform on behalf of the Federation such functions in connection with the business of the Federation, and, in particular, in relation to the making of contracts as the Governor-General may from time to time direct.

High commissioner for India

Sec. 302

The High Commissioner may, with the approval of the Governor-General and on such terms as may be agreed, undertake to perform on behalf of a Province or Federated State, or on behalf of Burma, functions similar to those which he performs on behalf of the Federation.

His status

It will be noticed that no striking change has taken place in the status and functions of the High Commissioner. Sir Tej Bahadur Sapru in his Memorandum pointed out that the High Commissioner's position being in certain respects semi-diplomatic he should owe his appointment to the Government of India. He urged that his powers and duties should be similar to those of the High Commissioners of the Dominions.*

* According to Prof. Keith, the High Commissioners for the Dominions act as channels of communication between the Government of the Dominions and of the United Kingdom. The Government of the United Kingdom have also appointed High Commissioners to some of the Dominion capitals as a means of strengthening contact. (*The Governments of the British Empire*, pp. 81-83, 171).

CHAPTER ELEVEN

ECONOMIC PROVISIONS

A. Commercial Discrimination

Besides the special responsibility placed on the Governor-General with regard to discrimination against British trade in India, the Act lays down elaborate provisions regarding commercial discrimination.

R. T. C. discussions on 'equality of trading rights'

Commercial discrimination and financial safeguards were among the subjects discussed at the sessions of the Round Table Conference. The discussion raised controversial issues, and the claim for 'equality of trading rights' has since then been disapproved by all shades of Indian public opinion. From the constitutional standpoint the proposals involve a serious restriction on the powers and sovereignty of the Federal Legislature. From the economic point of view, it would mean the perpetuation of the privileged position of non-nationals in India.

Mahatma Gandhi significantly observed that the talk of equality of rights between the Britishers and the Indians is as preposterous as that between a giant and a dwarf. He made it clear that "to talk of no discrimination between Indian interests and English and European is to perpetuate Indian helotage." Sir Pheroze Sethna also remarked in his speech at the second session, that it was not so much a matter of discrimination as of equalization. "Essentially, the question is not one of discrimination but of safeguarding of national interests ; and if some kind of differentiation between nationals and non-nationals is needed for economic development, the interests of India and India alone must be the supreme consideration."

Mr. Rangaswami Iyengar pointed out in a speech at the second session of the Conference, that no colony

had ever acknowledged such an injunction restraining for ever the Legislature from endeavouring to regulate not only the existing and accruing rights but also the expectations in investments by business connections of concerns instituted in India even when national interests demanded it. Nor was such a safeguard made a condition precedent to the grant of Dominion status in any component part of the British Commonwealth. Mr. Srinivasa Sastri very appropriately described the provisions regarding commercial discrimination, as 'a disability or discrimination' between India and the Dominions.

Secretary of State's Memorandum to Joint Committee

The Secretary of State submitted a 'Confidential Memorandum' on Discrimination, while tendering his evidence before the Joint Select Committee. Therein he outlined the principles underlying the proposals and detailing the special provisions for companies incorporated in the United Kingdom but trading in India, for companies incorporated in India, and for ships and shipping. The memorandum also dealt with the case of the 'reservation' of Bills which, though not discriminatory in form, were, in fact, discriminatory. Sir Samuel Hoare, while replying to the cross-examination on this issue referred to the conditions laid down in the External Capital Committee's Report (1925) and said that the present proposals would embrace all existing British companies trading in India but not new ones, when special privileges were intended to be offered to Indian enterprises by the Legislature. Sir Phiroze Sethna in the course of a vigorous cross-examination pointed out that the 'special provision regarding ships and shipping' had never been discussed in any of the sessions of the Round Table Conference. He also elicited the information that provision will be made for the automatic registration of British ships on the Indian register, thereby depriving India of the advantage of having a separate register and a distinct Mercantile Marine.

The fiscal relations between the United Kingdom and India have now been regulated for about fifteen years in accordance with the recommendations of the Joint Committee on the

Bill of 1919, commonly known as the Fiscal Convention.*

I

With the passing of the new Constitution Act, state the Joint Committee, the Convention, in its present form at all events, will necessarily lapse. "It is suggested in India", add the Committee, "that, in seeking to clarify the fiscal relations between India and themselves, His Majesty's Government are

Joint Committee of 1919 on fiscal autonomy

* "Nothing is more likely" said the Joint Select Committee on the Government of India Bill of 1919 in their Report, "to endanger the good relations between India and Great Britain than a belief that India's fiscal policy is dictated from Whitehall, in the interests of the trade and commerce of Great Britain. That such a belief exists at the moment there can be no doubt. That there ought to be no room for it in the future is equally clear. India's position in the Imperial Conference opened the door to negotiation between India and the rest of the Empire, but negotiation without power to legislate is likely to remain ineffective. A satisfactory solution of the question can only be guaranteed by a grant of liberty to the Government of India to devise those tariff arrangements which seem best fitted to India's needs as an integral portion of the British Empire. It cannot be guaranteed by statute, without limiting the ultimate power of Parliament to control the administration of India and without limiting the power of veto which rests in the Crown; and neither of these limitations finds a place in any of the Statutes in the British Empire. It can only, therefore, be assured by an acknowledgment of a convention. Whatever be the right fiscal policy for India for the needs of her consumers as well as for her manufacturers, it is quite clear that she should have the same liberty to consider her interests as Great Britain, Australia, New Zealand, Canada and South Africa. In the opinion of the Committee, therefore, the Secretary of State should, as far as possible avoid interference on this subject when the Government of India and its Legislature are in agreement, and they think that his intervention, when it does take place should

seeking to impose unreasonable fetters upon the future Indian Legislature for the purpose of securing exceptional advantages for British, at the expenses of Indian trade. The suggestion is without foundation."

Extension of convention demanded by Indian opinion

The trend of opinion expressed on the subject by responsible Indians, at the Indian Round Table Conference and outside of it, does not appear to have been properly appraised by the Joint Parliamentary Committee. Since the Fiscal Convention of 1919 came into force, Indians believed that even if there was some delay in a proper application of the principle of fiscal autonomy underlying the Convention, the British Government could not go back upon the convention and the very definite and unequivocal declaration made by British statesmen in the matter in both Houses of the British Parliament. It is true that the observations made on the subject by the Simon Commission in their Report created considerable anxiety in the public mind in India. But notwithstanding the unfavourable view that they took in the matter, the Commission regarded it as inevitable that the Government of India would in future become more and more responsive to the view

be limited to safeguarding the international obligations of the Empire or any fiscal arrangements within the Empire, to which His Majesty's Government is a party."

Subsequently in a speech made on the 3rd of March, 1921, in reply to a deputation from Lancashire on the Indian import duties on cotton, Mr. E. S. Montagu, Secretary of State for India, endorsed the principle laid down by the Joint Committee. He said : "After that Report by an authoritative Committee of both Houses, and Lord Curzon's promise in the House of Lords, it was absolutely impossible for me to interfere with the right which I believe was wisely given and which I am determined to maintain to give to the Government of India the right to consider the interests of India first, just as we, without any complaint from any other parts of the Empire, and the other parts of the Empire without any complaint from us, have always chosen the tariff arrangement which they think best fitted for their needs, thinking of their own citizens first."

of the Legislature and they made the definite statement that they "do not suggest any modification of the convention itself." They did not, in fact, go further than expressing their desire that in any case any extension of the principle of the fiscal Convention should only be made with the approval by Resolutions of both Houses of Parliament.

Sir Tej Sapru on fiscal autonomy

Sir Tej Bahadur Sapru demanded* that the convention should under the new Constitution be expanded and the Secretary of State should have no power to interfere with the decisions of the Indian Legislature in this matter. There should, he urged, be no room for doubt that the Federal Legislature should be possessed in the fullest measure of fiscal autonomy. He added: "Any interference with, or any attempt at whittling down the fiscal autonomy of India is bound to produce serious dissatisfaction, and to discount to a much larger degree than is probably realised the value of the proposed constitution".

Joint Committee on Indo-British commercial relations

The Committee lay down certain principles which should guide future policy in these matters: "We think", the Committee state, "that the United Kingdom and India must approach their trade problems in a spirit of reciprocity, which views the trade between the two countries as a whole. Both countries have a wide range of needs and interests; in some of these each country is complementary to the other, while in some each has inevitably to look rather to a third country for satisfactory arrangements of mutual advantage. The reciprocity which, as partners, they have a right to expect from each other consists in a deliberate effort to expand the whole range of their trade with each other to the fullest possible extent compatible with the interests of their own people. The conception of reciprocity does not preclude either partner from entering into special agreements with third countries for the exchange of particular commodities, where such agreements offer it advantages which it cannot obtain from the other; but the conception does imply that, when either partner is considering to what extent it can offer special advantages of this kind to a third

* In his Memorandum to the Joint Committee.

country without injustice to the other partner, it will have regard to the general range of benefits secured to it by the partnership, and not merely to the usefulness of the partnership in relation to the particular commodity under consideration at the moment.

Administrative and legislative discrimination

They further observe: "Discrimination may be of two kinds, administrative or legislative. We are satisfied that, with regard to administrative discrimination, a statutory prohibition would be not only impracticable but useless, for it would be impossible to regulate by any statute the exercise of its discretion by the Executive. The Governor-General and Governors in their respective spheres should have imposed upon them a special responsibility for the prevention of discrimination thus enabling them, if action is proposed by their Ministers which would have a discriminatory effect, to intervene and, if necessary, either to decline to accept their advice or (as the case may require) to exercise the special powers which flow from the possession of a special responsibility.*

Statutory provisions against legislative discrimination

Mr. Jayakar's illustration

* In his memorandum Mr. Jayakar supplies the following illustrations to show how the working of the new provisions is likely to affect prejudicially Indian interests: "To take an instance. The B. B. & C. I. Railway invited tenders both in England and India for sleepers some time ago. I understand that although one tender in London was slightly lower than an Indian tender, the Government of India in the exercise of its discretion had the contract awarded to the Indian Company as the producers of Iron and Steel in the country itself. There are many countries in the world to-day in which their respective Governments have issued specific instructions that for all Government works, works of public utility by municipal or other local bodies, materials produced in the country alone should be used with a view to the prevention of unemployment. The Indian Government is far more conservative in this respect than most other Governments. Tenders for public works are invited from all over the world and it is only in rare instances as when dumping prices are tendered, as is so often the case nowadays, and the difference is very small, that any preference is given to the home manufacturer. Under the provisions regarding administrative discrimination as laid down in the White Paper as strictly interpreted, it would be

Effect of provisions re: administrative discrimination

Legislative discrimination, however, stands upon a different footing, and it is in our judgment possible to enact provisions against it."

Provisions re: British subjects domiciled in the United Kingdom
Sec. 111

Exemption is granted by the Act to British subjects domiciled in the United Kingdom from the operation of any federal or provincial Act which restricts entry into British India, or imposes, by reference to place of birth, race, descent, language, religion, domicile, residence or duration of residence,

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open to any British manufacturer whose tender may be £100 less than the tender of an Indian manufacturer, actually to go to the Federal Court on the ground of administrative discrimination even if the Governor-General or the Governor did not choose to interfere in the exercise of his 'special responsibility.' Such a provision is not only detrimental to the interests of industries run by Indians in India, but also the interests of industries run principally by British interests in India such as the engineering and coal trades. No question of reciprocity enters into this. Reciprocity in any case, between a rich and an industrially powerful country like Great Britain and a poor and backward country like India is a bit of camouflage, but as applied to administrative discrimination it is nothingless than moonshine. Supposing there was an order for British rails which would mean employment to 10,000 British workmen, would any Railway Company or public body or Government in England dare to place the order in Germany or in Canada simply because the German or the Canadian tender was £100 less than the lowest British tender? Would they place the order with an Indian manufacturer if his tender was £100 less? The life of no British Government which systematically countenanced any such policy would be worth a month's purchase. It is perfectly right and reasonable that such should be the case. At a time when the spending of money for public works in order to relieve unemployment is powerfully advocated, it would certainly be wrong for a British Government or a Railway Company to give a contract outside Great Britain, merely because they saved a few pounds and thereby deprived a number of British workmen from getting their livelihood. The same thing would be done by Canada or France or Germany or Belgium, and there is no reason why it should not be done by India." (*Records*, Vol. III).

any disability, liability, restriction or condition in regard to travel, residence, the acquisition, holding, or disposal of property, the holding of public office, or the carrying on of any occupation, trade, business, or profession. But this exemption does not apply in so far as India subjects are subject to restrictions in the United Kingdom, nor is it illegal to apply quarantine regulations or to exclude or deport undesirables. Moreover, in case of grave menace to tranquillity or for the purpose of combating crimes of violence intended to overthrow the Government, the Governor-General or the Governor of a Province, as the case may be, may suspend temporarily the security afforded.

Taxation

Sec. 112

The passing of any law which would make British subjects domiciled in the United Kingdom or Burma or companies incorporated there, liable to greater taxation than they would be liable if domiciled, or incorporated in British India, shall be invalid.

Companies incorporated in the United Kingdom

Sec. 113

British companies are afforded special protection. It is laid down that a company incorporated in the United Kingdom, when trading in India, is to be deemed to have complied with the provisions of any Indian law relating to the place of incorporation of companies trading in India, or to the domicile, residence or duration of residence, language, race, religion, descent or place of birth, of the directors, shareholders, or of the agents and servants of such companies. British subjects domiciled in the United Kingdom who are directors, shareholders, servants or agents of a company incorporated in India are to be deemed to have complied with any conditions imposed by Indian law upon companies so incorporated, relating to the same matters.

Companies incorporated in India

Sec. 114

In pursuance of the policy of reciprocity between India and the United Kingdom, it is provided that no company or person is to benefit from these Sections, if, and so long as, similar restrictions are imposed by or under the law of the United Kingdom in regard to companies incorporated in, and persons domiciled in, British India.

Equal subsidies for British and Indian companies

Sec. 116

A very important Section, bearing on the policy of discriminating protection as laid down by the Indian Fiscal Commission of 1922, provides that companies incorporated in the United Kingdom and carrying on business in India are to be eligible for any grant, bounty or subsidy payable out of the revenues of the Federation or of a Province, for the encouragement of any trade or industry, to the same extent as companies incorporated in British India.

Companies registered after grant of subsidy

A distinction, however, has been drawn between companies already engaged, at the date of the Act which authorises the grant, in that branch of trade or industry which it is sought to encourage, and companies which engage in it subsequently. In the case of the latter, an Act of the Federal Legislature or of a Provincial Legislature may require that the company shall not be eligible for any grant, bounty or subsidy under the Act unless —

(*a*) the company is incorporated by or under the laws of British India, or if the Act so provides, is incorporated by or under the laws of British India or of a Federated State : and

(*b*) such proportion, not exceeding one half, of the members of its governing body as the Act may prescribe are British subjects domiciled in India or, if the Act so provides, are either British subjects domiciled in India or subjects of a Federated State ; and

(*c*) the company gives such reasonable facilities as may be so prescribed for the training of British subjects domiciled in India or, if the Act so provides, of British subjects domiciled in India or subjects of a Federated State.

Ships registered in the United Kingdom are not to be subjected by law in British India to any discrimination whatsoever, as regards the ships, officers or crew, or her passengers or cargo, to which ships registered in British India would not be subjected in the United Kingdom. Similar provisions are to apply in relation to aircraft.

Ships and Aircraft

Sec. 115

With regard to professional and technical qualifications in general, it is provided that all legislation shall require the previous approval of the Governor-General or the Governor, as the case may be. Further, all regulations in this matter shall be published four months before the date when they are expressed to come into operation. If within two months there is a complaint that the regulations discriminate unfairly against any class of persons affected thereby, the Governor-General or Governor, if he is of opinion that the complaint is well-founded, may by public notification disallow the regulations or any of them.

Professional and technical qualifications

Sec. 119

The right of medical practitioners in British India and in the United Kingdom to practise in either country is placed on a similar footing. In either case, medical practitioners refused the right may obtain a ruling by the Privy Council as to the propriety of their exclusion.

Medical qualifications

Sec. 120

III

The Joint Committee recognise that these restrictions are unsatisfactory and that the real solution must lie in a convention based on reciprocity. The Act lays down that if such a Convention is made, the provisions of the Act may be waived by Order in Council, so long as the Convention continues in force between the two countries.*

Power to secure reciprocal treatment by Convention

Sec. 118

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* A draft of such a Convention is contained in Keith : *Letters on Imperial Relations*, 1916-1935, pp. 232-44.

The draft Instrument of Instructions to the Governor-General contains the following:

Instructions to Governor General re: discrimination

"In the discharge of his special responsibility for the prevention of measures which would subject goods of United Kingdom origin imported into India to discriminatory or penal treatment, our Governor-General shall avoid action which would affect the competence of his Government and of the Federal Legislature to develop their own fiscal and economic policy, or would restrict their freedom to negotiate trade agreements whether with the United Kingdom or with other countries for the securing of mutual tariff concessions; and he should intervene in tariff policy or in the negotiation of tariff agreements only if, in his opinion, the main intention of the policy contemplated is, by trade restrictions, to injure the interests of the United Kingdom rather than to further the economic interests of India. And we require and charge him to regard the discriminatory or penal treatment covered by this special responsibility as including both direct discrimination (whether by means of differential tariff rates or by means of differential restrictions on imports) and indirect discrimination by means of differential treatment of various types of products; and Our Governor-General's special responsibility extends to preventing the imposition of prohibitory tariffs or restrictions, if he is satisfied that such measures are proposed with the aforesaid intention. It also extends, subject to the aforesaid intention, to measures which, though not discriminatory or penal in form, would be so in fact.

"At the same time in interpreting special responsibility to which this paragraph relates Our Governor-General shall bear always in mind the partnership between India and the United Kingdom within Our Empire which has so long subsisted the mutual obligations which arise therefrom."*

The following relevant extracts from the Memorandum of the British Indian Delegation

* Paragraph XIV.

reveal the implications of the provisions relating to commercial discrimination:

British Indian Delegation's views

"The question of Commercial Discrimination has been the subject of prolonged negotiations and discussions for many years. Throughout these discussions and negotiations, the expression Commercial Discrimination was used in a very limited sense. It had reference solely to internal restrictions on trade and commerce. It was never intended to include tariff arrangements and the other matters dealt with under the Fiscal Convention.

"On the question of principle there has always been a substantial measure of agreement. The All Parties Conference which met in India in 1928 and which was presided over by that eminent leader of the Congress, the late Pandit Motilal Nehru, stated in their report (commonly known as the Nehru Report) that 'it is inconceivable that there can be any discriminatory legislation against any community doing business lawfully in India'. The statement was endorsed in even more emphatic terms by Mr. Gandhi at the second Round Table Conference.

"The question was considered by the authors of the Montagu-Chelmsford Report and also by the Simon Commission. The former in paragraph 344 of their report made an appeal to Europeans 'to be content to rest like other industries on the new foundation of Government in the wishes of the people' and to Indians 'to abstain from advocating differential treatment aimed not so much at promoting Indian as at injuring British commerce'. The Simon Commission considered that it was not feasible to prevent discriminatory legislation by attempting to define it in a constitutional instrument. . . . . We must point out that if the clauses are drawn so widely as to prevent legitimate discrimination the Government would be driven to State socialism as the only method by which the provisions of the Act could be circumvented.

"We must state very frankly the apprehensions of Indian commercial and industrial interests in this matter. . . . The particular difficulty which is disturbing the minds of Indian commercial men is the possibility

Method of statutory prohibition disapproved

of powerful foreign trusts establishing themselves in India and making it impossible for Indian industries to develop, not necessarily by methods which in ordinary commercial practice would be regarded as unfair, but by their superior resources, powers of organisation, political influence, etc.* It is immaterial from the Indian point of view whether these trusts are British or international, nor do we see how legislation can differentiate between a foreign company which is registered in Great Britain and a British company.

"We strongly hold the view that a friendly settlement by negotiation is by far the most appropriate and satisfactory method of dealing with this complicated matter. Any statutory safeguards given to British commercial interests would irritate public opinion and would operate as impediments to a friendly settlement.

"We see grave practical objections to any constitutional provisions against administrative discrimination.

Mr. Jayakar on conditions re: future companies

* In his memorandum on Commercial Discrimination Mr. Jayakar stated: "What to my mind is most important is that India should have the right to impose conditions in the case of all future Companies who may desire to establish themselves in India in connection with the basic, national, key, or infant industries mentioned above. I do not think that it can be said that we would be raising a very important issue at the eleventh hour, because according to my reading of the proceedings of the Round Table Conference the right to make a distinction between existing and future British Companies has, as stated above, always been admitted. If such a thing is not done, to take the instance of Iron and Steel Industry of the Tatas, it will be possible for a powerful and long-established firm like Messrs. Dorman Long's, to establish themselves in India and compete with them. Even though 100 per cent. of their capital and 100 per cent. of the Directorate may be British, and they may not agree to train a single Indian in the more responsible posts in the Iron and Steel Industry, they will be entitled to the benefit of all the protective duties. It is only when any question of direct financial assistance in the shape of a subsidy or bounty arises that there is any likelihood of any distinction, but the possibility of a Company like the Tatas being given a subsidy or bounty in the future is very remote."

Provision re: administrative discrimination resented

Indian Ministers in charge of Transferred Departments in the Provinces have exercised unrestricted powers in respect of contracts and the purchase of stores for the last twelve years and there has been no complaint from any British companies that the powers have been abused. Apart from the fact that any provision in the new Constitution which would enable the Governor-General or the Government to interfere with the discretion of the Indian Ministers in these matters would be very strongly resented as an encroachment on the rights already granted by convention, we are convinced that administrative interference would in practice, seriously affect the relations between the Governor-General or the Governor and his Ministers."*

Principal objection

Mr. M. R. Jayakar very appropriately points out that the principal objection that has been raised to the proposals of the British Government urging commercial discrimination, on the basis of which the provisions of the Act have been framed, is that they do not provide an adequate measure for safeguarding the development of Indian industries, particularly the basic, national, key and infant industries.†

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* *Records*, Vol. III, pp. 212-216.

† "I can find no adequate reason", he adds, "why the Indian Legislature should be debarred from providing reasonable conditions regarding incorporation, capital, control, and similar other requirements which would ensure that companies to be formed under British initiative or control should promote the development of Indian trade and industry and not hamper or restrict it in any way. The conditions to be imposed would be similar to those recommended by the External Capital Committee and would be applied only in the case of basic or national industries, key industries and infant industries." Mr. Jayakar invited attention to the fact that the principle of applying such conditions when subsidies or bounties were to be granted was accepted in paragraph 4 of the Report of the Committee on Commercial safeguards at the Third Round Table Conference and had already been accepted by the

B. Reserve Bank of India

The Act also includes specific economic provisions relating to the exercise of certain powers with respect to the Reserve Bank.*

Bank : a pre-requisite

The establishment of a Reserve Bank was stipulated as one of the pre-requisities of the proposals relating to responsibility in the sphere of finance of the Federation. It was assumed that "before the first federal Ministry comes into being, a Reserve Bank, free from political influence, will have been set up by Indian legislation and be already successfully operating. The Bank would be entrusted with the management of currency and exchange".

Reserve Bank Act, 1934

The conditions as laid down in the White Paper for starting a Reserve Bank were (1) restoration of budgetary equilibrium ; (2) reduction of the existing short-term debt both in London and in India ; (3) accumulation of adequate gold reserve ; (4) restoration of India's normal export surplus. During the Third session of the Round Table Conference, a Committee appointed by the Secretary of State for India met in London and submitted a report on the Reserve Bank, advocating the principle of a shareholders' bank.† A Bill based on the Committee's recommendations, which were generally in accord with the proposals made by the Indian Currency Commission (popularly known as the Hilton-Young Commission) of 1926, was passed in December, 1933, and became Act II of 1934. The composition of the London Committee, the principle of a

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Government of India. (Memorandum to the Joint Committee, *Records*, Vol. III, pp. 312-313.)

* See also, Chapter Two, pp. 71-72, especially the observations of the British Indian Delegation.

† The Report of the Committee on Indian Reserve Bank Legislation (1933) is included in the *Records* of the Joint Committee. (Vol. III, pp. 95-134.)

shareholder's bank and many other provisions of the Bill aroused a good deal of opposition in the Assembly and in the country. The Bank started operations from the 1st April, 1935.

Constitution and functions of Reserve Bank

The Bank has been charged with the duty of regulating the issue of bank-notes and the keeping of reserves with a view to securing monetary stability in British India and generally to operate the currency and credit system of the country to its advantage. The question of the monetary standard best suited to India is left for future consideration, when the international monetary position has become sufficiently clear and stable. The Bank shall transact Government business and also take up the task of coinage. The original share capital of the Bank is five crores of rupees divided into shares of one hundred rupees each. Separate registers of shareholders are maintained at Bombay, Calcutta, Delhi, Madras and Rangoon. The general superintendence and direction of the affairs and business of the Bank are entrusted to a Central Board of Directors, consisting of a Governor and two Deputy-Governors to be appointed by the Governor-General in Council for a term of five years at a time four Directors to be nominated by the Governor-General in Council, eight Directors to be elected on behalf of the shareholders on the various registers, and one Government official to be nominated by the Governor-General in Council. Members of Legislatures cannot be Directors of the Bank. The Bank has an office in London, to look after the management of India Government funds in England.

The Joint Committee referred to the necessity of leaving no room for doubt as to the ability of India to

Joint Committee's views

maintain her financial stability and credit at home and abroad. "This is naturally of great importance in the sphere of currency and exchange, which, besides their pervading influence on the whole economic structure of the country, may have far-reaching effect upon government finances. At present currency and exchange are the direct concern of the Government of India, but for some time it has been felt to be desirable that they should be entrusted to a central bank, which would also control the credit mechanism of the country. The economic justification for such a change becomes re-inforced when constitutional changes are being made in the form of government at the Centre. . . . Reliance on the Bank to play its due part in safeguarding India's financial stability and credit clearly demands that at all events its essential features should be protected against amendments of the law which would destroy their effect for the purpose in view."

Certain amendments to require prior sanction

The Joint Committee, accordingly, recommended that any amendment of the Reserve Bank Act, or any legislation affecting the constitution and functions of the Bank, or of the coinage and currency of the Federation, should require the prior sanction of the Governor-General in his discretion. Certain of the functions vested by the Reserve Bank Act in the Governor-General in Council (of which an important example is the appointment of the Governor, two Deputy Governors and four nominated Directors of the Bank) will, according to appropriate provisions in the Constitution Act, be exercised by the Governor-General in his discretion.*

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* Labour members on the Joint Committee took occasion to protest against making the Bank absolutely impervious to national control and suggested the following amendment to the relevant sections of the Report:

"We note that neither at the first nor at the second Round Table Conference was the establishment of the Reserve

The Act accordingly provides that the functions of the Governor-General with respect to the following matters shall be exercised by him in his discretion, that is to say— **Powers of Governor-General**

(*a*) the appointment and removal from office of the Governor and Deputy Governors of the Reserve Bank of India, the approval of their salaries and allowances, and the fixing of their terms of office ; **Sec. 152**

(*b*) the appointment of an officiating Governor or Deputy Governor of the Bank ;

(*c*) the supersession of the Central Board of the Bank and any action consequent thereon ; and

(*d*) the liquidation of the Bank.

In nominating directors of the Reserve Bank of India and in removing from office any director nominated by him, the Governor-General shall exercise his individual judgment.

No Bill or amendment which affects the coinage or currency of the Federation or the constitution or functions of the Reserve Bank of India shall be introduced into or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion. **Previous sanction to monetary legislation** **Sec. 153**

Bank treated as a condition precedent to the inauguration of the Federation. It was an entirely new proposal brought forward at the Third Round Table Conference . . . . Assuming the establishment of the Bank, we suggest that the Governor and the Deputy Governors should be selected by the Governor-General in consultation with his Ministers.

"We are not in agreement with the underlying conception of the establishment of the Reserve Bank, namely, that it should be entirely free from political influence.

"We consider that decisions of policy in respect of credit and currency are vital interests of the community. They should not be made by shareholders whose private interests may not coincide with the welfare of the State, but should be influenced by Government.

"In any event it should be made clear that India's currency and credit policy will be decided in accordance with her own needs and not by the influence of external financial interests or foreign creditors." (*Proceedings*, Vol. I, Part II, pp. 427-428.)

C. Statutory Railway Authority

White Paper on future administration of Indian Railways

The White Paper, in discussing the future arrangements for the administration of the Railways under the Federal Government, stated: "His Majesty's Government consider that it will be essential that, while the Federal Government and Legislature will necessarily exercise a general control over railway policy, the actual control of the administration of the State Railways in India (including those worked by Companies) should be placed by the Constitution Act in the hands of a Statutory Body, so composed and with such powers as will ensure that it is in a position to perform its duties upon business principles, and without being subject to political interference. With such a Statutory Body in existence, it would be necessary to preserve such existing rights as Indian Railway Companies possess under the terms of their contracts to have access to the Secretary of State in regard to disputed points and if they desire, to proceed to arbitration".*

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* Brigadier-General Hammond had prepared a report at the instance of the Government of India early in 1932. The Consultative Committee sitting at Delhi, in connection with the Round Table Conference, decided on 3rd March, 1932, that "a clause be inserted in the Constitution Act that there shall be a Statutory Railway Board for the Administration of the Railways while the functions, composition and powers of the Board would be determined by an Act of the Federal Legislature". Two members of the Committee, dissenting, urged that "the Act should itself contain provisions embodying General Hammond's principal recommendations." This was the origin of the proposal. The matter was discussed in connection with the Railway Budget in March 1932, on the floor of the Assembly. Indian Members of the Legislative Assembly headed by Sir (then Mr.) Shanmukham Chetty recorded their emphatic

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Questions of principle and detail arising out of the proposal were considered by a Committee appointed by the Secretary of State in June, 1933. The Committee, which met in England, consisted of some members of the Round Table Conference and of the Indian Legislature, General Hammond and certain experts. The Joint Committee expressed the opinion that the scheme outlined by the London Committee of June, 1933, provided a suitable basis for the settlement of the question of the future administration of Indian Railways. Their approval was, however, subject to two conditions to which they attached importance, *viz.*, that (a) not less than three of the seven members of the proposed Authority should be appointed by the Governor-General in his discretion and that (b) the Authority should not be constituted on a communal basis.* The Joint Committee found "no

London Committee on Railway Administration (1933)

Sec. 182

protest against the manner in which this important question was being disposed of. Mr. B. Das thought that there was a "conspiracy to take away the control of the Railways from the Indian Legislature". He warned that if a Statutory Board was established, 'all money would go to England and all British Stores would be purchased at the expense of Indian industries."

* Identical views were expressed by Sir Samuel Hoare in his Memorandum to the Joint Committee on the Proposals for the future Administration of Indian Railways. Commenting on the 'distinct cleavage of opinion' in the Committee appointed by him to consider the Government scheme on the subject, Sir Samuel observed that he was opposed to the view that all the members of the Authority should be appointed by the Federal Government, because "such an arrangement might conflict with the fundamental principle that the Authority should be free from political influence." Regarding any communal

Joint Committee on Railway Authority

objection to the necessary steps being taken to this end in India", but urged that the governing principles should be laid down by the constitution Act, and also proposed that the necessary legislation be undertaken "at the earliest possible date". The governing principles in regard to the Authority, as laid down in the Joint Committee's Report, are incorporated in the Act. These indicate not only the extent of the control of the Federal Government and the Indian Legislature over the Railway Authority, but also the principles which should guide the Authority, the method of appointing members, the financial obligations of the Railway Authority, the safeguarding of existing interests of companies working some railways under contract with the Secretary of State, and the machinery for arbitration on disputed issues in connection with the railways. It is laid down that in future prior consent of the Governor-General at his discretion would be necessary to any legislation affecting the constitution or powers of the Railway Authority. Special importance was attached by the Committee to the provision of arbitration procedure for disputes between the Railway Authority and Railways owned by Indian States. They, accordingly, proposed that the Constitution Act should contain adequate provision to ensure reasonable facilities for the Indian States' railway traffic and to protect their system against unfair

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basis for the Authority, the Secretary of State regretted that he could not support it, as, "if such a precedent were set in this case it would be difficult to refuse to follow it in other cases." (*Records*, Vol. III, pp. 39-45.)

or uneconomic competition or discrimination in the Federal Legislature.

Safeguards added by Joint Committee

On Sir John Wardlaw-Milne's motion, the Joint Committee added the following to the provisions suggested by the London Committee in the Constitution Act: "The continuance in full force of the contracts at present existing with the Indian Railway Companies and the security of the payments periodically due to them in respect of guaranteed interest, share of earnings and surplus profits, as well as the right in accordance with their contracts to have access to the Secretary of State in regard to disputed points and, if they so desire, to proceed to arbitration."

In accordance with the recommendation of the Joint Committee, adopted on a motion by Sir Samuel Hoare and Mr. Butler, the Act further invests the Governor-General with a special responsibility in respect of the Railway Authority.

II

Constitution of Railway Authority

The details with regard to the Federal Railway Authority are laid down in the Eighth Schedule to the Act. It provides that the Federal Railway Authority, which shall be a body corporate by, and may sue and be sued in that name shall consist of seven persons to be appointed by the Governor-General.

Qualifications and tenure of members

A person shall not be qualified to be appointed or to be a member of the Authority, (a) unless he has had experience in commerce, industry, agriculture, finance, or administration ; or (b) if he is, or within the twelve months last preceding has been—

(*i*) a member of the Federal or any Provincial Legislature ; or

(*ii*) in the service of the Crown in India ; or,

(*iii*) a railway official in India.

Of the first members of the Authority, three shall be appointed for three years and any of those members

shall at the expiration of his original term of office be eligible for re-appointment for a further term of three years, or of five years.

Subject as aforesaid, a member of the Authority shall be appointed for five years and shall at the expiration of his original term of office be eligible for re-appointment for a further term not exceeding five years.

The Governor-General, exercising his individual judgment, may terminate the appointment of any member if satisfied that that member is for any reason unable or unfit to continue to perform the duties of his office.

Meetings of the Authority

All acts of the Authority and all questions before them shall be done and decided by a majority of the members present and voting at a meeting of the Authority. At any meeting of the Authority a person or persons deputed by the Governor-General to represent him may attend and speak, but not vote.

The Authority may make standing orders for the regulation of their proceedings and business, and may vary or revoke any such order. The proceedings of the Authority shall not be invalidated by any vacancy among their number, or by any defect in the appointment or qualification of any member.

Chief Railway Commissioner

At the head of the executive staff of the Authority there shall be a Chief Railway Commissioner, being a person with experience in Railway administration, who shall be appointed by the Governor-General, exercising his individual judgment, after consultation with the Authority.*

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* Referring to the protests made from the Labour benches, regarding the method of appointment of the Chief Railway Commissioner, Mr. Butler said that "it is fair that the Governor-General, when considering that appointment, should have before him the views of the Authority and should have consultation with the Authority. Then he exercises his individual judgment and that means that having consulted Ministers he makes up his own mind. Let us hope that there will be no difference of opinion. If there were any difference of

The Chief Railway Commissioner shall be assisted in the performance of his duties by a Financial Commissioner, who shall be appointed by the Governor-General, and by such additional commissioners, being persons with experience in railway administration as the Authority, on the recommendation of the Chief Railway Commissioner, may appoint. The Chief Railway Commissioner shall not be removed from office except by the Authority and with the approval of the Governor-General, exercising his individual judgment. Similarly, the Financial Commissioner shall not be removed from office except by the Governor-General, exercising his individual judgment.

Financial Commissioner

The Chief Railway Commissioner and the Financial Commissioner shall have the right to attend any meeting of the Authority, and the Financial Commissioner shall have the right to require any matter which relates to, or affects, finance to be referred to the Authority.

III

The Act lays down that the executive authority of the Federation in respect of the regulation and the construction, maintenance and operation of railways shall be exercised by the Federal Railway Authority. Their authority extends to the carrying on in connection with any Federal railways of such undertakings as, in the opinion of the Authority, it is expe-

Executive authority in respect of railways

Sec. 181

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opinion, he would have the last word. Therefore, this important officer is appointed after consultation with the Authority whom he will serve and with the Ministers who are interested, and he is appointed by the Governor-General who is also interested. (*Debates*, House of Commons, May 14, 1935.)

dient should be carried on in connection therewith and to the making and carrying into effect of arrangements with other persons for the carrying on by those persons of such undertakings. This would entitle the Authority to have their own road services or to enter into agreements with other parties to run such services in conjunction with Railways.

The Federal Government or its officers are to perform in regard to the construction, equipment, and operation of railways such functions for securing the safety both of members of the public and of persons operating the railways, including the holding of inquiries into the causes of accidents, as in the opinion of of the Federal Government should be performed by persons independent of the Authority and of any railway administration.

Directions and principles to be observed by Railway Authority

Sec. 183

The Authority in discharging their functions under this Act shall act on business principles, due regard being had by them to the interests of agriculture, industry, commerce and the general public, and in particular shall make proper provision for meeting out of their receipts on revenue account all expenditure to which such receipts are applicable under the provisions of the Act. In the discharge of these functions the Authority shall be guided by such instructions on questions of policy as may be given to them by the Federal Government.

Governor-Generals' powers re: the Authority

If any dispute arises between the Federal Government and the Authority as to whether a question is or not a question of policy, the decision of the Governor-General in his discretion shall be final.

The powers of the Governor-General in the exercise of his special responsibilities and the

'reserved' subjects apply to the Railway Authority also. Similarly, in the event of a breakdown of the Constitution, the Governor-General can assume all incidental powers in relation to the Authority.

Official directors of railway companies

Sec. 199

Any powers of the Secretary of State in Council with respect to the appointment of directors and deputy directors of Indian railway companies shall be exercised by the Governor-General in his discretion after consultation with the Authority.

Railways in Indian States which have not federated

Sec. 198

If and in so far as His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States may entrust to the Authority the performance of any functions in relation to railways in an Indian State which is not a Federated State, the Authority shall undertake the performance of those functions.

IV

Finance of Railway Authority

Sec. 186

Regarding the finances of the Railway Authority, it is laid down that any surpluses on revenue account shown in the accounts of the Authority shall be apportioned between the Federation and the Authority in acordance with a scheme to be prepared, and from time to time reviewed, by the Federal Government, or, until such a scheme has been prepared, in accordance with the principles which immediately before the establishment of the Authority regulated the application of surpluses in railway accounts. Any sum apportioned to the Federation under this provision shall be transferred accordingly

and shall form part of the revenues of the Federation.*

Occasion of control by Federal Legislature

The Federation may provide any moneys, whether on revenue account or capital account, for the purposes of the Railway Authority, but, where any moneys are so provided, the provision thereof shall be deemed to be expenditure and shall accordingly be shown as such in the estimates of expenditure laid before the Chambers of the Legislature.

Provisions as to certain obligations of the Railway Authority

Sec. 187

There shall be deemed to be owing from the Authority to the Federation such sum as may be agreed or, in default of agreement, determined by the Governor-General in his discretion, to be equivalent to the amount of the moneys provided, whether before or after the passing of the Act, out of the revenues of India or of the Federation for capital purposes in connection with railways in India (exclusive of Burma) and the Authority shall out of their receipts on revenue account pay to the Federation interest on that amount at such rate as may be so agreed or determined, and also make payments in reduction of the principal of that amount in

* Although these principles are quite similar to the existing practice, the Act does not however point out whether the present method of charging for depreciation or interest should be followed. If that is done, in the present state of affairs the Railways cannot to any extent render relief to the Federal Budget, for at least some years to come, as they have not been able to do so since 1931-32. Further, no mention is made whether the amount of suspended contribution standing to the debit of the Railways, in accordance with the convention of 1924, should continue as the liability of the Railway Authority. Judged from the present state of railway finance, it is likely that these amounts will have to be cancelled.

accordance with a repayment scheme so agreed or determined.

This shall not be construed as preventing the Authority from making payments to the Federation in reduction of the principal of any such amount as aforesaid out of moneys other than receipts on revenue account.

It shall be an obligation of the Authority to repay to the Federation any sums defrayed out of the revenues of the Federation in respect of any debt, damages, costs, or expenses in, or in connection with, any proceedings brought or continued by or against the Federation or against the Secretary of State in respect of railways in India.

Railway Police

It shall be an obligation of the Authority to pay to any Province or Indian State such sums as may be equivalent to the expenses incurred by that Province or State in the provision of police required for the maintenance of order on federal railway premises, and any question which may arise between the Authority and a Province or State as to the amount of any expenses so incurred shall be determined by the Governor-General in his discretion.

Audit and Annual report

The accounts of the receipts and expenditure of the Authority shall be audited and certified by, or on behalf of, the Auditor-General of India.

The Authority shall publish annually a report of their operations during the preceding year and a statement of accounts in a form approved by the Auditor-General. **Sec. 190**

Railway Rates Committee

The Governor-General may, from time to time, appoint a Railway Rates Committee to give advice to the Authority in connection with any dispute between persons using, or desiring to use, a railway and the Authority as to rates or traffic facilities which he may require the Authority to refer to the committee. **Sec. 191**

Legislation re : rates and fares

A Bill or amendment making provision for regulating the rates or fares to be charged on any railway shall not be introduced or moved in either Chamber of the Federal Legislature except on the recommendation of the Governor-General.

Sec. 192

V

Railway Tribunal

Provision is made for the appointment of a Railway Tribunal,* consisting of a President and two other persons to be selected to act in each case by the Governor-General in his discretion from a panel of eight persons appointed by him in his discretion, being persons with railway, administrative, or business experience.

Sec. 196

The President shall be such one of the judges of the Federal Court as may be appointed for the purpose by the Governor-General in his discretion after consultation with the Chief Justice of India and shall hold office for such

* In this connection the Joint Committee state: "We attach special importance to the arbitration procedure . . . as a means of settling disputes on administrative issues between the Railway Authority and the Administrations of railways owned and worked by an Indian State. The Constitution Act should contain adequate provision to ensure reasonable facilities for the State's railway traffic and to protect its system against unfair or uneconomic competition or discrimination in the Federal Legislature. We consider that States owning and working a considerable railway system should be able to look to the arbitration machinery which we recommend for adequate protection in such matters. On the other hand, if any State is allowed to reserve, as a condition of accession, the right to construct railways in its territory notwithstanding Item (9) of the revised exclusive Federal List, its right to do so should be subject to appeal by the Railway Authority to the same tribunal." (Vol. I, Part I, para. 395.)

period of not less than five years as may be specified in the appointment, and shall be eligible for re-appointment for a further period of five years or any less period.

The Tribunal may make such orders, including interim orders, orders varying or discharging a direction or order of the Authority, orders for the payment of compensation or damages and of costs and orders for the production of documents and the attendance of witnesses, as the circumstances of the case may require and it shall be the duty of the Authority and of every Federated State and of every other person or authority affected thereby to give effect to any such order.

Appeal to Federal Court

An appeal shall lie to the Federal Court from any decision of the Railway Tribunal on a question of law, but no appeal shall lie from the decision of the Federal Court on any such appeal. No other court shall have any jurisdiction with respect to any matter with respect to which the Railway Tribunal has jurisdiction.

Expenses of Tribunal

The Governor-General shall exercise his individual judgment as to the amount to be included in respect of the administrative expenses of the Railway Tribunal in any estimates of expenditure laid by him before the Chambers of the Federal Legislature.

Mutual traffic facilities

Sec. 193

It is laid down that it shall be the duty of the Authority and every Federated State so to exercise their powers in relation to the railways with which they are respectively concerned as to afford all reasonable facilities for the receiving, forwarding, and delivering of traffic upon and from those railways, including the receiving, forwarding, and delivering of through traffic at through rates, and as to secure that there shall be between one railway system and another no unfair discrimination, by the granting of undue

preferences or otherwise, and no unfair or uneconomic competition.

Any complaint by the Authority against a Federated State or by a Federated State against the Authority on the ground that the abve-mentioned provisions have not been complied with shall be made to and determined by the Railway Tribunal.

Construction and reconstruction of Railways

Sec. 195

If the Railway Authority or a Federated State object to any proposal for constructing a railway or for altering the alignment or gauge of a railway, on the ground that the carrying out of the proposal will result in unfair or uneconomic competition with a Federal railway or a State railway, as the case may be, and, if an objection so lodged is not withdrawn within the prescribed time, the Governor-General shall refer to the Railway Tribunal the question whether the proposal ought to be carried into effect, either without modification or with such modification as the Tribunal may approve, and the proposal shall not be proceeded with save in accordance with the decision of the Tribunal. But these provisions shall not apply in any case where the Governor-General in his discretion certifies that for reasons connected with defence effect should, or should not, be given to a proposal.

Appeal by State to Railway Tribunal

Sec. 194

If the Authority, in the exercise of any executive authority of the Federation in relation to interchange of traffic or maximum or minimum rates and fares or station or service terminal charges, give any direction to a Federated State, the State may complain that the direction discriminates unfairly against the railways of the State or imposes on the State an obligation to afford facilities which are not in the circumstances reasonable, and any such complaint shall be determined by the Railway Tribunal.

APPENDIX I

Delimitation of Constituencies

Report of the Hammond Committee (1936)

Terms of reference

The task with which the Indian Delimitation Committee* was entrusted was the preparation of a complete scheme of delimitation of the constituencies, whether territorial constituencies or constituencies allotted to representatives of special interests, in the Legislatures to be established under the provisions of the Government of India Act. The terms of reference further contemplated the investigation of a variety of minor, but important and difficult, questions which are connected with the main problem of delimitation. The Committee note that in their instructions to them, His Majesty's Government, having regard to the differences in provincial conditions, and the size of the field to be covered, deliberately refrained from any precise indication of the principles which were to govern their investigations. But they point out that due to the radical differences in provincial conditions and the importance of giving the fullest weight to provincial feeling in the details of both delimitation and the election of members to the Legislatures, they have been compelled to recognise the impractibality of applying any uniform principle even in matters so important and so general in their bearing as the question of multi-member or single member constituencies, the method of voting to be adopted, or the basis on which representation is to be accorded to urban and rural areas.

Uniformity impracticable

Orders in Council

Three Orders in Council dealing with Provincial Legislative Assemblies, Provincial Legislative Councils and Scheduled Castes based on the Hammond Report, were presented to Parliament on March 23, 1936. Other Orders are to follow in due course.

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* The Committee was appointed on July 31, 1935. The Report was issued on March 2, 1936. The Committee was composed of Sir Laurie Hammond (Chairman), Justice Sir M. Venkatasubba Rao and Mr. Justice Din Muhammad.

Single vs. multi-member constituencies

The Committee after examining the history of the proposals for, and the arguments for and against, multi-member constituencies recommend that in all provinces save Bombay and Madras single-member constituencies are to be accepted as a rule, save where a multi-member constituency is necessitated by the reservation of seats for the scheduled castes or backward tribes. In Bommay, where the public demand for multi-member constituencies is really strong, the principle of multi-member constituencies may be accepted. A certain number of multi-member constituencies, containing not more than two unreserved seats, may be created in Madras.*

Three methods of voting discussed

The Committee discuss the three main alternative methods of voting (excluding the system of the single transferable vote which they do not regard as suitable for adoption in present day conditions in India), *viz.*—(*a*) the single non-transferable vote ; (*b*) the distributive vote, free or compulsory ; and (*c*) the cumulative vote.

Under the first system, a voter has one vote only which he can cast for any of the candidates who seek his suffrage, but he can of course cast it in favour of one candidate only. The case for the general adoption of the single non-transferable vote, on the ground that it was only in this way that minorities could feel any confidence that they would receive an adequate degree of representation, was very strongly urged on the Committee in a memorandum communicated to them by the Proportional Representation Society of England.

Under the distributive system of voting, the elector has as many votes as there are seats but can give one vote only to any one candidate. Under the cumulative system, the elector has as many votes as there are seats, but may plump them all for one candidate, or distribute them over two or

* On the representation of the Government of Madras, supported by the Government of India, His Majesty's Government provide in the Provincial Assemblies Order in Council presented to Parliament on March 23, 1936, that all territorial constituencies in Madras shall be single-member, except in those cases where a seat is to be reserved for the scheduled castes and in six other cases, and that such plural constituencies, as will thus remain, shall be two-member constituencies.

more candidates as he may desire. This is the existing system in Bombay, and it is certainly much simpler administratively than the distributive system which is in force in Madras. In addition, it gives the elector the utmost liberty. His freedom is unfettered. This is entirely denied him in the single non-transferable vote, and only partially allowed by the distributive vote.

Committee's recommendation

The Hammond Committee recommend that save as otherwise stated, cumulative voting shall be adopted in all multi-member territorial constituencies ; and the single non-transferable vote in the Bihar general constituencies, where a seat is reserved for the backward tribes, as also in the Berhampur constituency in Orissa and the Singhbhum constituency in Bihar.

Scheduled caste constituencies

Regarding the scheduled caste constituencies and the Poona Pact, the Committee observe that (I) the number four is neither a maximum nor a minimum, but an optimum* ; (II) withdrawals shall not be allowed ; (III) except in Bengal, there is to be no restriction on a member of the scheduled castes from contesting an unreserved seat in a constituency where there is a reserved seat. In Bengal, however, no member of the scheduled castes not elected at the primary election is qualified to contest a seat in a constituency, where there is a general seat reserved for the scheduled castes.

The method of voting in general constituencies containing reserved seats for the scheduled castes is to be cumulative.† If

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* "It is desirable," state the Committee, "that there should be five or more candidates at the primary election, but it is in no wise compulsory."

† "The Poona Pact lays down that the voting at primary elections for the scheduled castes shall be by means of the single non-transferable vote, and the question for decision is whether the same system should, as recommended by the Proportional Representation Society, be adopted in the case of final elections in these constituencies. We have given most careful consideration to this question. which is of great importance as affecting the working of the Poona Pact. As a result, however, we have reached the unhesitating conclusion that, whatever the merits of the single non-transferable vote as an electoral device, and however convenient it may be for

two panel-candidates head the polls at the final election, the first is to be declared elected to the reserved seat and the second to the non-reserved seat. Summary trials of petitions connected with a primary election are to be held by District Magistrates and disposed of summarily. The decision will not be liable to be set aside either by any court or any higher executive authority. The disqualification of any person on

System proposed in Poona Pact rejected

administrative purposes, its adoption at final elections, in constituencies in which seats are reserved for the scheduled castes, would be contrary to the spirit of the Poona Pact. . . . . The objections of principle which we see to the adoption of this method of voting in the case of the scheduled caste constituencies, are shared by representative members alike of the caste Hindus and of the scheduled castes." (*Delimitation Committee's Report,* Vol. I, p. 19.)

The Committee's recommendations, in connection with the scheduled castes, came in for a great deal of criticism when the Indian Legislative Assembly considered the Report.

Dr. P. N. Banerjea said that the cumulative vote was against the spirit of the Poona Pact and would in effect constitute separate electorates. It was on this issue that Mr. Gandhi had gone on a fast.

Rao Bahadur M. C. Rajah, representing the depressed classes, quoted the views of various depressed class witnesses before the Hammond Committee, the majority of whom had either favoured the single non-transferable vote or the distributive vote Even Dr. Ambedkar, though supporting the cumulative vote, had admitted, that his experience was restricted to Bombay. Mr. Rajah challenged the Committee's claim that its recommendation was in accordance with the views of the leaders of the community. The cumulative system meant that neither a caste candidate nor a depressed class candidate would try to seek the others community's vote, causing thereby the Hindu community to split and disintegrate. He also objected to the remark in the Report that executive orders might be issued to district officers in order to encourage and facilitate the candidature of depressed class men. Mr. Rajah thought that this remark was against democracy and was liable to damage the work of depressed class associations and to make the District Magistrate the election agent of certain candidates spending even money for them. (*Debates,* Indian Legislative Assembly, February 6, 1936.)

account of corrupt practices shall be capable of removal by the Governor. The deposit* which will cover both the primary and final elections by scheduled caste candidates is to be Rs. 50; the deposit for demanding a summary trial Rs. 250; the deposit for questioning the validity of the final election Rs. 1,000. Scheduled Caste candidates shall have also to file a return of election expenses.

In Madras, out of 30 scheduled caste seats, one seat has been allotted to a constituency in the City of Madras and the remaining 29 seats to rural areas. In Bombay, 15 seats are reserved for the scheduled castes. The Committee have allotted two to the City of Bombay and 13 to rural areas. In Bengal, all the 30 seats are assigned to rural areas; in five constituencies two seats are reserved for the scheduled castes.

Four out of the 20 seats reserved for the scheduled castes in the U. P. have been allotted to Lucknow, Cawnpore, Agra and Allahabad. The remaining 16 are allotted to rural areas where the scheduled castes preponderate.

In the Punjab, Bihar, Assam and Orissa all the scheduled caste seats are reserved in rural constituencies.†

In the C. P., the only urban seat allotted to the scheduled castes is for Nagpur city.

Urban *vs.* rural constituencies

The problem of urban *versus* rural areas was raised in Parliament, and was specially referred to in the Committee's terms of reference. The Committee find that a basis for distinguishing urban from rural areas is impracticable. To secure uniformity the only course open was to deal with each province individually, securing that the proposals put forward (*i*) had the support of the decided bulk of public opinion; (*ii*) were so framed that rural areas would not be dominated by urban elements; (*iii*) ensured that urban areas received

* "It is necessary to preclude freak candidates, and yet not place the deposit so high as to discourage the genuine candidate." (Chapter V, *Hammond Report*).

† The Scheduled Castes Order provides for an increase of the scheduled castes electorates in Madras, the United Provinces, Bihar and Orissa.

the full representation to which they were entitled and in any case in which weightage was given to urban areas that weightage was not greater than was appropriate ; and (*iv*) were void of conspicuous anomalies.

Principles Governing distribution of territorial constituencies

On the question of territorial constituencies, the Committee consider that the question of fundamental importance in connection with delimitation is, of course, the delimitation of the territorial communal constituencies allotted to the general, the Mahomedan, and the Sikh population. On the satisfactory delimitation of these constituencies, and the proper balancing of interests, whether general or local, in framing proposals for them, must inevitably depend the smooth and satisfactory working of the new Constitution. The general basis of the proposals of the Committee in this matter, is to work upon the recognised administrative units, whether the *tahsil,* the *thana,* the *taluq,* the district, or the division. The Committee have adopted the principle that it is undesirable in any case to reduce the number of seats assigned to urban areas, or to a special interest, below the number so assigned in the existing Legislative Councils. Broadly speaking, the Committee have, as a rule, taken population as the general basis of their proposals. After discussing the proposals of various local Governments they make the following distribution :

Madras

To Madras the Committee have assigned 15 general and two Mahomedan seats to urban areas, the basis for inclusion in urban areas being a combination of not more than two towns of a substantial size in the same district. The Committee have recommended two multi-member urban constituencies and a certain number of multi-member rural constituencies, the constituencies ordinarily containing not more than two unreserved seats.*

Bombay

In Bombay, fourteen general seats and six Mahomedan seats have been allotted to urban areas. Only the biggest cities, which have genuinely urban characteristics and whose problems and interests are different from or likely to conflict

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* As already noted His Majesty's Government have altered the Committee's proposals regarding multi-member constituencies, in their Order on the subject.

with those of the areas classed as rural, have been included in the urban category.

In Bengal, all municipalities which are subject to the provisions of the Bengal Municipal Act and the Calcutta Municipal Act, the Cantonment of Barrackpore and the town of Khargpur, which is not enjoying municipal self-government, are included in the general urban areas and only selected municipalities in the Mahomedan urban constituencies. Twelve general and six Mahomedan seats have been assigned to urban representation. **Bengal**

In the United Provinces, the basis for inclusion in urban areas is towns with a population of 25,000 and over; the number of seats allotted to urban areas is general 13 and Mahomedan 13. **U. P.**

In the Punjab, the number of seats allotted to urban areas is general eight, Mahomedan nine and Sikh two, the basis for inclusion in urban areas being all towns with a population of not less than 7,500, cantonments and district headquarters and first class municipalities. **Punjab**

In Bihar, the number of seats allotted to urban areas is general five and Mahomedans five, the basis for inclusion being all municipal, notified and cantonment areas. **Bihar**

In the Central Provinces and Berar, the number of seats allotted to urban areas is general 10 and Mahomedan two, the basis for inclusion being all municipalities and towns with a population of 10,000 and over. The number of seats allotted to the Central Provinces is general 64 and Mahomedan six. The number of seats allotted to Berar is general 20 and Mahomedan six. **C. P.**

In Assam, the number of urban constituencies in the Assam Valley is general 32 and Mahomedan 13; Surma Valley: general 15 and Mahomedan 21. **Assam**

In N.-W. F. Province, the number of seats allotted to urban areas is general three and Mahomedan three. **N. W. F.**

In Orissa there is no urban constituencies.

In Sind, the number of seats allotted to urban areas are, general three and Mahomedan two, the basis for inclusion in the urban areas being the bigger cities. **Orissa & Sind**

The Indian Franchise Committee* indicated that they thought it preferable that the representatives of women

* *Report*, paras. 218-220.

Representation of women

in the provincial legislatures should be returned from seats set apart for women in selected urban areas, the electorate for the purpose in each such area being the electors belonging to that area, both men and women, the voters having in such areas two votes, one in the ordinary territorial constituency for which they were qualified, and the other for a woman candidate. The Joint Committee expressed themselves also in favour of the reservation of seats in constituencies formed for the purpose and containing both men and women. They added that they were inclined to think it desirable that those constituencies should be both urban and rural, and that they saw no objection to the area being varied by rotation should this prove to be desirable and practicable. The Hammond Committee is definitely in favour of allotting all the seats reserved for women in Provincial Legislative Assemblies to special constituencies. They state: "Our reasons are the following. In the first place we cannot but regard the special representation which has been provided for women in the Provincial Assemblies as to some extent in the nature of an *ad hoc* provision, the importance of which will be particularly marked during the early years of the new Constitution. These constituencies will be both experimental and educative. At present in one or two provinces, and in some influential quarters, there is a distinct prejudice against women's active participation in public life. In all, there is among women as a whole at present but little political consciousness. There is no familiarity with parliamentary institutions. The object, we conceive, of these special seats for women is to ensure that, pending an improvement, women shall not go unrepresented in the legislatures." The Committee do not support the system of rotation as, in the opinion of the Committee, 'it is a question not so much of depriving a particular area of the vote, as of bestowing a privilege on an area selected as best suited for the purpose.'*

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* The Provincial Assemblies Order in Council generally provides that the election to seats reserved for women shall be in most Provinces by special territorial constituencies consisting of voters, both men and women. Provision however, is made for the Punjab and Sind, in addition to Bengal and Bihar, to confine the electorate for seats allotted to Mahomedan women to women only.

The Provincial Electoral Orders in Council have removed for Madras also, as had already been recommended for other

Universities The Committee recommend enfranchisement in the University constituencies of members of the Senate or Court and all registered graduates of not less than seven years' standing.

Land-holders In all provinces, except the U. P., territorial constituencies have been formed for the filling of seats allotted to landholders. Four will be filled by the British Indian Assocation (U. P.) and two by the Agra Zamindars' Association. For the purposes of election, membership will, in the U. P., be confined to persons paying land revenue of not less than Rs. 10,000 per annum.

Principles of delimitation of Commerce seats The Committee base their recommendation for commercial representation on three general principles. First, that the membership of an association should be deemed a more appropriate qualification. Secondly, that out of a number of competing bodies, such alone should be selected, as truly represent substantial commercial interests. Thirdly, that attempts should be made to concentrate on a single authoritative body, wherever possible, and avoid in any event combining unrelated or dissimilar organisations. The distribution of such seats in some of the provinces is given below:

Madras In Madras four seats have been allotted to European commerce and two to Indian commerce. The Madras Chamber of Commerce and the Madras Trades Association will between them have three seats; the Madras Planters, the Southern Indian Chamber of Commerce and the Nuttukottai Nagarathar's Association will each have one seat. The Andhra Chamber of Commerce have not been enfranchised.

Bombay In Bombay the existing arrangements will continue and the East India Cotton Association will have the seventh seat. The Bombay Chamber of Commerce and the Bombay Trades Association will between them have a three member constituency with one seat reserved for the Bombay Trades Association.

Bengal Bengal is given 14 European and five Indian seats. Of the five Indian seats, two have been assigned to the Bengal National Chamber of Commerce and one each to the Indian

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Provinces, the necessity, at the first elections, for application by women who are entitled to be registered on their husband's qualification.

Chamber of Commerce, the Marwari Association and the Muslim Chamber of Commerce.

U. P.

The seat allotted to Indian commerce in the U. P. is to be shared by the U. P. Chamber of Commerce and the Merchants' Chamber, U. P.

Punjab, Bihar, C. P., Orissa & Sind

The electorate for the Punjab commerce seat is to be composed of the Northern India Chamber of Commerce, the Punjab Chamber of Commerce, the Punjab Trades Association and the Indian Chamber of Commerce. In Bihar, the three existing constituencies are to continue and the new fourth seat will be filled by the Bihar Chamber of Commerce. In the C. P., Orissa and Sind, the Committee recommend the formation of constituencies comprizing companies, firms and individuals possessing certain qualifications.

Assam

Of the eleven seats allotted to Assam nine (seven European and two Indian) have been assigned to planting (tea) and two (one European and one Indian) to commerce and industry. Regarding the two commerce and industry seats, the Committee recommend special constituencies consisting of companies, firms and induviduals, covering the whole Province, there being separate electorates for Europeans and Indians.

Labour seats

Regarding labour seats the Committee have accepted the principle laid down by the Joint Select Committee that constituencies for the labour seats shall partly be in organized labour constituencies and partly in unorganized labour constituencies. The Committee have achieved this in all cases except in Orissa and Sind. The Trade Unions have been given two seats in Madras, six in Bombay, two in Bengal and one each in the U. P., the Punjab and the C. P.* The remaining 24 seats have been assigned to unorganized labour. All the four seats in Assam and one seat in Bengal have

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* In the course of the debate in the Indian Legislative Assembly, Mr. N. M. Joshi, nominated member to represent Labour interests, complained that the Hammond report was unfair to labour in several respects. He suggested an amendment of the report to ensure that all labour seats be filled through trade unions except in Assam where such unions did not exist. Secondly, a railwayman who had his union registered in a Province other than where he resided, should, in Mr. Joshi's opinion, be enfranchised.

been assigned to tea garden labour. In the case of tea garden labour, the Committee have accepted the principle of rotation for the sake of obtaining direct election. The Committee also recommend that the existing trade union law be so amended as to invest local governments with the power of inspecting the registers of the trade unions and to make Government or professional audit of their accounts compulsory.

Labour Tribunal

Tribunals, as suggested by the Royal Commission on Labour and supported by the Indian Franchise Committee, may be constituted by the Governor, acting in his discretion. This tribunal is to make an yearly review of the labour constituencies. The qualifications of a trade union for inclusion in the electorate for the trade union constituencies are (1) that it has been in existence for two years and was registered for one year before the date fixed for the preparation of the electoral roll; (II) that its membership during the year preceding the preparation of the roll was not below 250; (III) that it has complied with any rules under the Trade Union Act for the inspection of books; (IV) that the preceding conditions have been attested by the Tribunal.

Trade union constituencies: qualifications of electors

Electoral registers for the trade union constituencies are to be confined to the province in which the trade union is registered. Where the election is to be indirect, the electoral roll is to be prepared by the employer.*

Backward areas and Tribes

Four out of the five seats allotted to the backward areas and tribes in Orissa are to be filled by nomination. Such seats assigned to Bombay and Bihar and the remaining seat in Orissa are to be filled by direct election from multi-member general constituencies having one seat reserved for the backward tribes. Madras, the Central Provinces, and Assam are to have special constituencies for election to these seats. In Assam there are to be four seats for the backward tribes and five for the backward areas.

Provincial Councils

The proposals of the local Governments in regard to the delimitation of constituencies of Provincial Legislative Councils have been accepted.

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* The Provincial Assemblies Order provides that in case of indirect election votes should be cast by delegates specially elected for the purpose, and not by the executives of Unions as the Bengal Government proposed.

FEDERAL LEGISLATURE

Recommendations have also been made with regard to some of the special types of seats in the Federal Legislature.

Federal Commerce Non-Provincial Seat

The Associated Chambers of Commerce of India and Federation of Indian Chambers of Commerce shall each have one seat in the Assembly and the electorate for the third seat allotted to Northern Indian Commercial bodies, shall be the Northern India Chamber of Commerce, the Punjab Chamber of Commerce and the Upper India Chamber of Commerce. In regard to provincial and special seats allotted to the Federal Legislature, the recommendations of local Governments are accepted.

Federal Labour seats

Federal Labour Seats :—The seat assigned to Assam labour in the Federal Assembly is to be filled by direct election from a tea garden constituency to be chosen in rotation by the Governor in his discretion from one of the tea garden constituencies for the Labour seats in the Assam Legislative Assembly. The non-provincial seat is to be assigned to the National Trades Union Federation or such other organisation of workers as may be selected by the Government of India for nomination of the workers' delegate to the International Labour Conference under the provisions of Article 389 (3) of the Treaty of Versailles.

Chief Commissioners' Provinces

Seats allotted to the Chief Commissioners' Provinces, in the Federal Assembly, are to be filled by direct election, in the case of Delhi and Ajmer-Mewara. The Coorg Legislative Council will elect the member for Coorg to the Federal Assembly. The seat assigned to British Baluchistan is to be filled by nomination by the Governor-General.

Federal Council of State

The recommendations of the Local Governments as to the constituencies of the Federal Council of State are accepted.

In regard to the conduct of elections, the Committee recommend : (*i*) simplification of procedure for nomination and scrutiny by the returning officer; (*ii*) the returning officer or the presiding officer to be given powers to correct obvious and minor mistakes in the electoral roll.

Conduct of elections

The Committee recommend the establishment of an Elections department for the revision of an electoral roll at

any time; and the framing of an Election Manual and rules to avoid unnecessary challenging of voters.

Corrupt Practices

The Committee also recommend that (1) personation is to be a cognizable offence; (2) the rule regarding hiring of conveyances is to be abrogated and the expenditure on this account is to be included in the return of election expenses; (3) there is to be no change in the existing law relating to corrupt practices.

APPENDIX II

Constitution of Burma

Extension of Montagu-Chelmsford reforms to Burma

The authors of the Montagu-Chelmsford Report "set aside the problem of Burma's political evolution for separate and future consideration", because they thought that Burma was not India.* The Joint Select Committee on the Government of India Bill, 1919, excluded Burma from the operation of the Montagu Reforms on the ground that "the Burmese are as distinct from the Indians in race and language as they are from the British." The exclusion of Burma from the so-called benefits of the Reforms, however, caused dissatisfaction, and in 1923, on the recommendation of a Committee presided over by Sir Frederic Whyte, Burma was brought within the ambit of the Reforms of 1919.

Simon Commission on the separation issue

The Simon Commission devoted special attention to the study of the Burmese question. The Commission were of opinion that "so far as there is public opinion in the country it is strongly in favour of separation." They adduced many other grounds for the separation of the two countries. These were "the absence of common political interests with continental India, the constant and increasing divergence of economic interests, the financial inequities (as they appear in Burman eyes) which association with India inevitably entails, and the fact that the indigenous peoples of Burma belong to the

* Para. 189 of the M C. Report.

Mongolian group of races and are distinct from the Indian races in origins, in languages, and by temperament and traditions."* The Simon Commission recommended that separation should be effected forthwith. The emergence in the field of practical politics of the proposal for an Indian Federation, according to some, e.g., the Joint Committee, greatly reinforced the arguments in favour of separation.

Government of India's views

The Despatch of the Government of India on the Report of the Indian Statutory Commission accepted the principle of separation but laid down that no enunciation of policy in this behalf was desirable before the question of the separation of Burma had been considered by the Round Table Conference. The Burma sub-committee made the suggestion after hurried meetings, amidst much hustle, that the principle of separation be accepted. The Round Table Conference at its first session merely noted the suggestion, with the proviso that the prospects of constitutional advance towards responsible Government held out to Burma as part of British India, would not be prejudiced by separation.†

Burma Sub-Committee of first R. T. C.

Burma R. T. C.

A special Burma Round Table Conference was called by His Majesty's Government in November, 1931 and the whole matter was withdrawn from the purview of the Indian Round Table Conference. At the end of the session, in January, 1932, the Prime Minister made a Declaration in which he stated:

Prime Minister's Declaration

"The first step is to ascertain whether the people of Burma endorse the provisional decision that separation should take place .... The people of Burma will be in a position to decide whether or not they are in favour of separation from India. His Majesty's Government consider that the decision might best be taken after a general election at which the broad issue had been placed before the electorate. ... That

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* *J. P. C. Report,* Vol. I, Part I.

† Mr. Ba Pe, one of the delegates from Burma to the Round Table Conference put one aspect of the Burmese case in a nutshell when he declared as follows: "If the reference to the prospects of constitutional advance means that Burma will get something which is in no way inferior to what India is going to get, then there can be no objection to her separation from India."

decision will determine whether, on the one hand, Burma should be independent of India with a Constitution on the lines set forth above or, on the other hand, should remain a Province of India with the prospects indicated in the proceedings of the two Sessions of the Indian Round Table Conference—and in this connection it should be remembered that if an Indian Federation is established it cannot be on the basis that members can leave it as and when they choose."

At the subsequent general election, the Burmese electors, by no fewer than 500,000 against separation to 270,000 votes for separation, expressed their desire to remain associated with India. It was, however, argued that the issues were not placed squarely before the electorate.

When, however, the new Council was called upon to give a straight answer to the question of separation, or Federation on the lines of His Majesty's Government's proposals, it declined to do so. None of the large number of resolutions tabled provided a clear indication of the people's mind. Even the anti-separationists did not vote for Federation, but expressed a desire to cast their lot with India as a tentative measure, reserving the right to withdraw from the Federation at a later date. Several adjournments were granted to enable the parties to arrive at a compromise resolution and, after the Governor had refused further to prolong the sitttings, which had lasted several days, the special session of the Council was prorogued.*

Later, forty-four elected members representing a majority of elected members of the Council submitted a Memorandum to the Secretary of State against separation. Before the second Burma Round Table Conference the popular point of view was stated as follows:—"If our choice is limited to separation on the basis of the Prime Minister's proposed Constitution and an entry into the Indian Federation on the same terms as the other Indian provinces, we unhesitatingly choose the federal

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* The decision of the Burmese elected representatives was, by 37 votes to 31, in favour of remaining in the Indian Federation, but the Government threw in the official and nominated members, with the result, that that vote was reversed. There was finally a vote in favour of separation by 47 against 37. (*Vide, Proceedings,* Burma Legislative Council, 21 February, 1935).

alternative as being in keeping with the very clear mandate we had obtained from the country.'"*

Sir Samuel Hoare before Joint Committee

Sir Samuel Hoare presented to the Joint Parliamentary Committee a memorandum embodying the proposals of His Majesty's Government for the future constitution of Burma if it were decided to separate Burma from India.† Assuming that Burma was to be separated, he outlined a scheme of constitutional advance under which executive authority in a unitary Burma would vest in the Governor, who would also be the Commander-in-Chief. He would himself direct and control the administration of finance, external affairs, ecclesiastical affairs, monetary policy, currency, coinage, and matters connected with scheduled areas. Other subjects would be administered by Ministers elected by, and responsible to, the Council. The Legislature would be bi-cameral.

The British Government whose sympathies with the separationist point of view was known, finally declared their decision through Sir Samuel Hoare in favour of the separation of Burma. The European commercial community in Burma had for sometime past steadily agitated in favour of such a decision. It was also argued that, constitutionally, a desire to join the Indian Federation, with power to retire at will, was fallacious. Twelve Assessors from Burma were invited subsequently to work with the Joint Committee.

Burma Council reject J. P. C proposals

The constitution for Burma as proposed by His Majesty's Government was considered in detail by the Joint Parliamentary Committee. The Report of the Committee on Burma formed the subject of discussion by the Burma Legislative Council. There was a motion before the Council opposing separation and rejecting the constitution as proposed by the Joint Committee. The Council, while not accepting the motion, carried a proposal favourng the immediate grant of Dominion Status to Burma.

Negotiations and enquiries

Shortly after the publication of the Joint Committee's Report, representatives of the Burma and Indian Governments entered into negotiations to settle the future financial and commercial relations between the two countries. These nego-

* Dr. Ba Maw in reply to the Archbishop of Canterbury.

† *Records*, Vol. III, p. 53 *et seq.*, and p. 135 *et seq.*

tiations resulted in an agreement maintaining the *status quo* for a period of five years, a proposal to allow a certain latitude for low revenue duties having been abandoned. Commenting on this agreement in the House of Commons, Sir Samuel Hoare advised representatives of British trade not to ask for any special safeguard for British trade and industry at the present stage, on the ground that any attempt to obtain concessions which the Indian and the Burman Governments were unwilling to offer of their own accord would adversely affect British trade with India.

Howard-Nixon Report

A tribunal was also appointed to advise the Secretary of State on the formulation of a just financial settlement between India and Burma. The tribunal's Report was published in May, 1935. Taking the figures up to the year ending March 1933, the tribunal calculated, that on the basis of 3½ per cent. interest, Burma would pay India over two crores of rupees annually for 45 years to redeem principal and interest. The Report was adversely commented upon in the Indian Legislative Assembly.

Government of Burma Act

The Government of Burma Act, 1935, (originally Part XIV of the India Act of 1935) lays down the details of a unitary constitution for Burma, in which the Governor combines the powers of the Governor-General of India with those of a Governor of an Indian Province.*

The Executive

The executive authority of Burma shall be exercised on behalf of His Majesty by the Governor. The Governor is given a Council of Ministers not exceeding ten in number. He is to act at his discretion in respect of defence, ecclesiastical affairs, external relations, monetary policy, currency and coinage, the Shan States and similar areas, and areas which are not British territory ; he may be aided in these matters by three Counsellors. Provision is made for a Financial Adviser to the Governor, and an Advocate-General for Burma. The Governor's special responsibilities are similar to those of the Governor-General of India so far as

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* For discussions re : some of the sections in the Burma Act, see *Debates*, House of Commons, May 30, 1935.

Major Milner presented the Burmese case in an able speech before the House of Commons (*Debates*, April 10, 1935).

applicable to Burma, and he has the same powers as Governors of Provinces in India in respect of the police and the prevention of crimes of violence against the Government. He will, of course, be under the general control and superintendence of the Secretary of State. Provision is also made for the appointment of three Advisers to the Secretary of State, to advise him in matters relating to Burma.

The Legislature

There shall be a Senate consisting of 36 members, half chosen by the Governor at his discretion, and half elected by the Lower House by proportional representation. The Lower House, to be known as the House of Representatives, shall consist of 132 members all elected. General non-communal constituencies shall elect 91 members; Karens 12, Indians 8, Anglo-Burmans 2, Europeans 3, commerce and industry 11, Rangoon University 1, Indian Labour 2, and non-Indian Labour 2.* The powers of the Senate are similar to those of a Legislative Council constituted in some of the Indian Provinces. The previous sanction of the Governor extends to the same matters as in the case of the Governor-General of India, with immigration legislation added. The Governor has power to apply Acts to the Shan States and similar areas, subject to such modifications as he desires, and to make regulations for them. He has also power to make ordinances subject to confirmation by the legislature, and, in respect of matters relating to his special responsibilities or the exercise of his individual judgment, he may issue ordinances or Acts as may be desirable. There is also provision for the suspension by proclamation of the Constitution, in the event of a deadlock. The provisions regarding restrictions on discrimination relate not merely to British companies, ships and air-crafts, and professional qualifications, but also to British subjects domiciled in British India.

Governor's legislative powers

Discrimination

Provisions relating to financial legislation follow those for the bicameral Provincial Legislatures in India. The House of Representatives alone has authority to

* 2,000,000 men and 700,000 women will be voters, amounting to over 23 per cent. of the population.

Financial provisions

assent to grants. Audit is entrusted to an Auditor-General holding office on terms similar to those for a Judge of the High Court. The Home accounts of the Government of Burma may be audited by the Auditor of Indian Home Accounts.

Railway Board

There shall be a Railway Board with functions similar to those of the Indian Railway Authority, with the Chief Railway Commissioner as President, a Financial member nominated by the Governor, exercising his individual judgment, six non-official members and a Secretary to the Government of Burma, ex-officio.

High Court, Services, etc.

The Rangoon High Court is constituted like the High Courts in India, but unrelated to the Federal Court; and the Services are similarly safeguarded. The Secretary of State is authorised to select officers for the Burma Civil Service (Class I), the Burma Civil Medical Service, and the Burma Police (Class I). A Burma Frontier Service corresponding to the political service in India, is constituted, which will act under the Governor's control. A Public Service Commission is also provided for.

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